SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
RICHARD BOEKEN,)
)
PLAINTIFF,)
)
VS.) SUPERIOR COURT
) CASE NO. BC 226593
PHILIP MORRIS, INCORPORATED,)
A CORPORATION; INTERNATIONAL HOUSE)
OF PANCAKES, INCORPORATED, A)
CORPORATION,)
)
DEFENDANTS.)
)
REPORTER'S DAILY TRANSCRIPT OF PROCEEDINGS
TUESDAY, MAY 8, 2001
P.M. SESSION
VOLUME 30A
PAGES 4822 THROUGH 4885-1, INCLUSIVE
APPEARANCES:
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OFFICIAL REPORTER
I N D E X
TUESDAY, MAY 8, 2001..... 2:4822:3
9:00 A.M..... 2:4822:7
WITNESSES
RICHARD CARCHMAN
CROSS-EXAMINATION (RESUMED) BY MR. PIUZE..... 2:4823:1
REDIRECT EXAMINATION BY MR. LEITER..... 2:4834:18
RECROSS-EXAMINATION BY MR. PIUZE..... 2:4864:25
REDIRECT EXAMINATION (FURTHER) BY MR. LEITER..... 2:4874:18
JOSHUA TRABULUS
DIRECT EXAMINATION BY MR. CARLTON..... 2:4876:12
CROSS-EXAMINATION BY MR. PIUZE..... 2:4883:9
REDIRECT EXAMINATION BY MR. CARLTON..... 2:4884:26
EXHIBITS
I.D. 5514 - 1-30-97 REPORT..... 2:4853:14
I.D. 5798 - TOBACCO CONTROL ARTICLE..... 2:4857:14
I.D. 5634 - '64 SURGEON GENERAL'S REPORT..... 2:4858:18

1 CASE NUMBER: BC 226593
2 CASE NAME: BOEKEN V. PHILIP MORRIS
3 LOS ANGELES, CALIFORNIA TUESDAY, MAY 8, 2001
4 DEPARTMENT 308 HON. CHARLES W. MC COY, JUDGE
5 APPEARANCES: (AS NOTED ON TITLE PAGE.)
6 REPORTER: LINDA STALEY, CSR NO. 3359, RMR, CRR
7 TIME: 9:00 A.M.
8

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RICHARD CARCHMAN,
WITNESS, RESUMED THE STAND AND TESTIFIED FURTHER AS FOLLOWS:

THE COURT: THANK YOU, MA'AM.
ALL RIGHT. OUR JURY PANEL IS WITH US; COUNSEL
ARE PRESENT.
GOOD MORNING, COUNSEL.

(CHORUS OF GOOD MORNING'S.)

THE COURT: GOOD TO SEE YOU.
AND OUR WITNESS IS ON THE WITNESS STAND.
THE WITNESS: GOOD MORNING.
THE COURT: YOU UNDERSTAND YOU'RE -- GOOD MORNING TO
YOU.
YOU UNDERSTAND YOU'RE UNDER OATH.
THE WITNESS: YES, SIR.
THE COURT: MR. PIUZE.

4823

CROSS-EXAMINATION (RESUMED)
BY MR. PIUZE:
Q. DR. CARCHMAN, COULD I ASK YOU A FAVOR?
A. YES.
Q. I'M GOING TO BE VERY BRIEF. COULD YOU GIVE ME
BRIEF ANSWERS?
A. I WILL DO MY BEST, SIR.
Q. YOU SAID TO ME YESTERDAY, WHAT SHOULD WE DO,
GET OUT OF THE BUSINESS?
DO YOU REMEMBER THAT?
A. I REMEMBER SAYING THAT AS IN RESPONSE TO A MUCH
BROADER QUESTION, YES.
Q. YES?
A. YES.
Q. WHEN YOU WENT TO WORK AT PHILIP MORRIS, DID
ANYONE SAY TO YOU, WE'RE ABOUT TO BE REGULATED OUT OF
EXISTENCE AND WE'RE NOT GOING TO BE IN BUSINESS IN FIVE YEARS
OR SO, HELP US FIND OTHER BUSINESSES?
A. NOBODY EVER SAID THAT TO ME.
Q. AS A MATTER OF FACT, PHILIP MORRIS HAS BEEN
GOING MORE AND MORE AND MORE OUT OF THE DOMESTIC TOBACCO
BUSINESS, HASN'T IT?
A. IT IS A DIVERSIFIED COMPANY, AND IT'S BEEN
DIVERSIFIED FOR MANY, MANY YEARS. I CAN'T ANSWER YOUR
QUESTION OTHER THAN THAT.
Q. WELL, YOU CAN SAY YES.
A. NO. BECAUSE I'M NOT SURE I'M KNOWLEDGEABLE
ENOUGH TO SAY THAT'S WHAT'S GOING ON.

4824

THE LAST STOCKHOLDERS' MEETING, WHICH WAS HELD
LAST MONTH, IF I REMEMBER CORRECTLY, TOBACCO STILL REPRESENTS
A MAJOR PIECE OF THE BUSINESS.
Q. WITHOUT DOUBT.
A. WITHOUT DOUBT.
Q. WITHOUT DOUBT.
SIMPLY POINTING OUT TO YOU THAT KRAFT FOODS,
MILLER BEER, NABISCO AND ALL OF THESE OTHER THINGS HAVE COME
ALONG IN THE LAST DECADE AND A HALF, HAVEN'T THEY?
A. YES.
Q. OKAY. NEXT. WHEN DID PHILIP MORRIS BUY
INBIFO?
A. EARLY 1970'S.

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Q. WHEN DID PHILIP MORRIS START DEALING WITH INBIFO?
A. A FEW YEARS BEFORE THAT.
Q. YOU'VE RESEARCHED THIS, CORRECT?
A. I'VE LOOKED AT IT, YES.
Q. SO YOU COULD TESTIFY HERE?
A. I HAVE.
Q. HOW LONG WAS PHILIP MORRIS DEALING WITH INBIFO BEFORE IT BOUGHT IT?
A. AS I SAID, A FEW YEARS MAYBE.
Q. TWO OR THREE YEARS?
A. NO MORE.
Q. NO MORE. OKAY. YOU SAID YESTERDAY, I BELIEVE -- CORRECT ME IF I'M WRONG -- THE TAR FROM THE TOBACCO, BURNING TOBACCO, IS

4825

THE BAD THING?
A. I HAVE SAID THAT, YES.
Q. AND SO WHEN WE'RE COMPARING RED MARLBOROS AND GOLD MARLBOROS, THE POINT YOU WERE MAKING YESTERDAY, I BELIEVE, WAS, IT'S THE AMOUNT OF TAR THAT YOU WIND UP GETTING?
A. THAT'S CORRECT.
Q. WAS THAT YOUR POINT?
A. YES, SIR.
Q. AND THE LESS TAR, I THINK PROBABLY THE BETTER?
A. PROBABLY THE BETTER, YES.
Q. DID YOU EVER HEAR OF A CAMBRIDGE CIGARETTE?
A. I'VE HEARD OF A CAMBRIDGE CIGARETTE, YES.
Q. WHO MADE IT?
MR. LEITER: IT'S BEYOND THE SCOPE OF HIS TESTIMONY.
THE COURT: GO AHEAD. I'LL ALLOW YOU TO ASK A COUPLE OF QUESTIONS, SEE WHERE IT GOES.
Q. BY MR. PIUZE: PHILIP MORRIS MADE A CAMBRIDGE THAT DR. FARONE HELPED INVENT THAT HAD ZERO, ZERO TAR, RIGHT?
A. PHILIP MORRIS WAS DEVELOPING AND MARKETED A CAMBRIDGE CIGARETTE. I DON'T REMEMBER SEEING OR READING ANYTHING ABOUT DR. FARONE PLAYING ANY MAJOR ROLE IN THE DEVELOPMENT OF IT.
Q. LET ME MOVE THIS ALONG.
PHILIP MORRIS HAD A CIGARETTE CALLED CAMBRIDGE THAT HAD ZERO, ZERO TAR?
A. ON THE FTC SMOKING MACHINE MECHANISM, YES.

4826

Q. ZERO, ZERO, THE STUFF THAT CAUSES CANCER?
A. YES.
Q. OKAY. NOW, DO PEOPLE SMOKE TO GET THE NICOTINE?
A. SOME PEOPLE DO, YES.
Q. WHILE PHILIP MORRIS NOW CONDUCTS THE STUDIES THAT HAVE JUST STARTED A COUPLE OF YEARS AGO TO TRY TO FIGURE OUT WHAT IN TOBACCO SMOKE CAUSES CANCER, IS THAT WHAT YOU'RE TRYING TO FIGURE OUT?
A. THAT IS A PART OF IT, YES.
Q. CAN'T WE PROVIDE -- CAN'T YOU PROVIDE, THE PEOPLE WHO ARE HOOKED ON SMOKING CURRENTLY, AN ALTERNATIVE NICOTINE DELIVERY DEVICE SO THAT THEY CAN GET THE NICOTINE THEY CRAVE AND THEY CAN GET THE FLAVOR WITHOUT GETTING ALL OF THAT BAD TAR THAT CAN KILL THEM?
A. CONCEPTUALLY, YES.
Q. LET ME GIVE TWO POTENTIAL WAYS.
YOU CAN TAKE A CAMBRIDGE CIGARETTE THAT

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19 PHILIP MORRIS ALREADY DEVELOPED THAT HAS ZERO, ZERO TAR AND
20 SOMEHOW YOU CAN PUT A LITTLE NICOTINE FLAVOR IN THERE AND A
21 LITTLE OF THE FLAVOR THAT PEOPLE LIKE FROM BENSON & HEDGES,
22 CAN'T YOU?
23 A. YES, YOU COULD.
24 Q. AND THE PEOPLE CAN SMOKE THOSE CAMBRIDGE
25 CIGARETTES AND GET ZERO, ZERO OF THIS TAR WHICH IS, YOU SAY,
26 IS THE BAD STUFF THAT CAUSES CANCER, RIGHT?
27 A. I SAID IT WAS PROBABLY THE BAD STUFF, YES.
28 Q. HOW ABOUT ANOTHER ATTEMPT?
4827
1 WHILE PHILIP MORRIS UNDERTAKES THIS RESEARCH,
2 WHICH WAS STARTED TWO YEARS AGO, COULDN'T WE CONCEPTUALLY GET
3 AN AEROSOL THAT HAS NICOTINE IN IT AND TASTE A LITTLE BIT
4 LIKE MARLBORO AND SQUIRT IT AND THAT AEROSOL GOES TO THE
5 BRAIN JUST LIKE THE SMOKE FROM A CIGARETTE AND THE RECEPTORS
6 IN THE BRAIN THAT LIKE THAT NICOTINE SO MUCH GET IT?
7 A. THERE ARE ACTUALLY PEOPLE OUT THERE THAT EITHER
8 HAVE THEM OR ARE DEVELOPING THEM.
9 Q. PEOPLE OUT THERE WHERE?
10 A. IN THE PHARMACEUTICAL INDUSTRY.
11 Q. WELL, WHAT ABOUT PHILIP MORRIS?
12 A. ACTUALLY, PHILIP MORRIS HAS A NUMBER OF
13 PROJECTS THAT I WOULD CALL AEROSOL-RELATED THAT COULD
14 POTENTIALLY DO JUST -- DO JUST THAT.
15 Q. WELL, THEY COULD HAVE POTENTIALLY DONE JUST
16 THAT 30 YEARS AGO?
17 A. I DON'T THINK SO. I THINK THE TECHNOLOGY
18 WASN'T THERE. AND WITH REGARD TO CAMBRIDGE, IT WAS LIKE
19 SUCKING ON A BRICK IN TERMS OF TRYING TO GET ANYTHING THROUGH
20 THE -- WHICH PROBABLY RELATED TO WHY IT WAS ALMOST IMPOSSIBLE
21 TO RATE, AND YOU COULDN'T DRAW ANYTHING THROUGH IT AND
22 PROBABLY WHY YOU GOT 0.0 TAR ON THE MACHINE.
23 Q. PROBABLY WHY PEOPLE WHO SMOKE CAMBRIDGE,
24 ACCORDING TO YOUR ANALYSIS, WOULD NEVER EVER, EVER GET LUNG
25 CANCER?
26 A. THEY COULDN'T SMOKE THE CIGARETTE, YES.
27 Q. SO IF CAMBRIDGE SUCCEEDED SOMEHOW -- IF
28 PHILIP MORRIS SUCCEEDED WITH CAMBRIDGE A LITTLE BIT, IT WOULD
4828
1 HAVE BEEN A DIRECT COMPETITOR TO THE ALL-CAPTURING MARLBORO
2 BRAND, WOULD IT NOT?
3 A. COMPETITOR?
4 I THINK EVERY PRODUCT THAT WE MAKE IS
5 POTENTIALLY A COMPETITOR WITH EVERY OTHER PRODUCT WE MAKE.
6 Q. HAVE YOU EVER HEARD OF THE EXPRESSION, "DON'T
7 MESS WITH SUCCESS"?
8 A. OF COURSE.
9 Q. PHILIP MORRIS DIDN'T WANT TO MESS WITH MARLBORO
10 BECAUSE IT WAS SO UNBELIEVABLY SUCCESSFUL, DID IT?
11 MR. LEITER: OBJECTION. ARGUMENT. CALLS FOR
12 SPECULATION.
13 THE COURT: SUSTAINED.
14 Q. BY MR. PIUZE: HERE'S WHAT WE HAD UP YESTERDAY,
15 AND I'M PROBABLY GOING TO END WITH THIS RIGHT HERE. THIS IS
16 DR. BENOWITZ' TESTIMONY HERE ON APRIL 6TH. I'M JUST GOING TO
17 READ IT AND ASK YOU A COUPLE -- A FEW QUESTIONS.
18 (READING:)
19
20 "THE LIMITATIONS ON THE FTC
21 METHOD HAVEN'T BEEN A SECRET FOR OVER 30
22 YEARS, IF EVER?"
23 HIS ANSWER: "NOT A SECRET TO

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24 THE FTC. I THINK MOST SMOKERS HAVE NOT BEEN
25 MADE AWARE OF THAT. MOST SMOKERS THINK THAT
26 LOW-YIELD CIGARETTES ARE LESS HAZARDOUS.
27 MOST SMOKERS DON'T REALIZE THAT YOU CAN SMOKE
28 THE LOWEST YIELD CIGARETTE TO THE HIGHEST
4829
1 YIELD CIGARETTE WITH A 10 PERCENT DIFFERENCE
2 IN EXPOSURE, MAYBE. SO VERY LITTLE EXPOSURE,
3 WHICH IS WHAT YOU SEE IF YOU ARE A HEAVY
4 SMOKER.
5 "SMOKERS HAVE NEVER BEEN TOLD
6 WHAT TO DO TO AVOID COMPENSATION. SO,
7 WHEREAS, SCIENTISTS KNOW ABOUT THAT AND THE
8 GOVERNMENT KNOWS ABOUT THAT, SMOKERS DO NOT
9 KNOW ABOUT COMPENSATION, IN GENERAL.
10 "AND I THINK THEY SHOULD HAVE.
11 BECAUSE THEY'RE THE ONES WHOSE BEHAVIOR NEEDS
12 TO BE ADJUSTED IF THEY REALLY WANT CIGARETTES
13 TO BE LESS HAZARDOUS."
14
15 DO YOU DISAGREE WITH ANY OF THAT?
16 A. WELL, IN GENERAL, I DON'T DISAGREE WITH IT. IN
17 TERMS OF WHAT THE CONSUMER KNOWS OR DOESN'T KNOW ABOUT
18 LOW-TAR CIGARETTES AND FTC, I'M NOT COMPETENT TO ADDRESS
19 THAT.
20 Q. DO YOU DISAGREE WITH THE FACT THAT BECAUSE OF
21 COMPENSATION, THE LOWEST YIELD CIGARETTES OUT THERE AND THE
22 HIGHEST YIELD CIGARETTES OUT THERE ON A SCALE OF 100 --
23 THERE'S ONLY A 10 PERCENT DIFFERENCE BETWEEN THEM?
24 A. IF I REMEMBER WHAT HE SAID, THAT'S NOT
25 PRECISELY -- THAT'S NOT PRECISELY WHAT HE SAID. IT COULD
26 BE -- IT COULD BE THAT DIFFERENCE OR NO DIFFERENCE AT ALL OR
27 IT COULD BE LARGER.
28 Q. I'LL TELL YOU WHAT. I DON'T WANT TO BOG DOWN
4830
1 HERE.
2 CONCEPTUALLY, IS WHAT HE'S SAYING THERE
3 CORRECT?
4 A. I SAID, YES. EXCEPT FOR THE PART ABOUT WHAT
5 SMOKERS KNOW OR UNDERSTAND ABOUT THE MACHINE, THE
6 MACHINE-DERIVED DELIVERIES. BUT I THINK SMOKERS DON'T
7 GENERALLY APPRECIATE ALL THE THINGS THAT GO INTO THIS. I
8 THINK SCIENTISTS KNOW ABOUT IT, THE GOVERNMENT KNOWS ABOUT
9 IT, WE KNOW ABOUT IT.
10 Q. WE?
11 A. THE TOBACCO COMPANIES KNOW. WE TOLD THE FTC
12 WHEN THEY WERE PUTTING TOGETHER THE REGULATION.
13 Q. WHY DIDN'T YOU TELL THE SMOKERS?
14 MR. LEITER: OBJECTION. ARGUMENT.
15 THE COURT: OVERRULED.
16 THE WITNESS: I THINK THE RESPONSIBILITY FOR LETTING
17 THE CONSUMERS KNOW ABOUT THE PRODUCT AS IT RELATES TO HEALTH
18 ISSUES, WE'RE NOT PERMITTED TO DO THAT IN THE UNITED STATES.
19 WE CAN'T MAKE ANY HEALTH CLAIMS.
20 AND I THINK TO TELL SOMEBODY -- TO SUGGEST TO
21 SOMEBODY, IF YOU SMOKE IT THIS WAY, YOU'RE GOING TO REDUCE
22 YOUR RISK, I THINK WOULD BRING -- AND I WOULD AGREE WITH THE
23 GOVERNMENT -- THE FULL FORCE OF THE GOVERNMENT WOULD BE DOWN
24 ON WHOEVER DARED TO DO THAT.
25 THAT'S WHY THE WARNING LABELS ARE SO
26 UNEQUIVOCAL. OF THE 50 MILLION PEOPLE WHO SMOKE, THEY'RE NOT
27 ALL GOING TO GET LUNG CANCER. BUT THE CIGARETTE WARNING
28 LABEL SAYS, SMOKING CAUSES LUNG CANCER. IT DOESN'T SAY IT

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4831
1 CAUSES IT IN 10 PERCENT OR 15 PERCENT.
2 THERE'S -- YOU CAN'T WITHIN THE LOTTERY. YOU
3 KNOW, IT'S MY LUCKY DAY, I'M GOING TO SMOKE THIS WAY, AND I'M
4 NOT GOING TO GET LUNG CANCER. I THINK THAT WOULD BE THE MOST
5 IRRESPONSIBLE THING TO DO.
6 IF THE GOVERNMENT WANTED TO DO IT -- AND THEY
7 HAVEN'T, AND I DON'T BELIEVE THEY WILL -- THAT'S THEIR
8 PREROGATIVE. IT'S DEFINITELY NOT, IN MY OPINION -- AGAIN,
9 I'M NOT A LAWYER -- IN MY OPINION, IT'S DEFINITELY NOT THE
10 PREROGATIVE OF A TOBACCO COMPANY TO SAY ANYTHING LIKE THAT.
11 Q. IT HAS BEEN --
12 A. MY OPINION.
13 Q. IT HAS BEEN --
14 A. IT'S MY OPINION.
15 Q. IT HAS BEEN THE PREROGATIVE OF THE TOBACCO
16 COMPANY TO SAY EXACTLY THAT?
17 A. WELL --
18 MR. LEITER: OBJECTION. ARGUMENT.
19 THE COURT: SUSTAINED. SUSTAINED. THE COURT CAN
20 INSTRUCT, HOWEVER.
21 MR. PIUZE: WELL, IF YOU'LL TAKE CARE OF IT, YOUR
22 HONOR, THEN I'LL --
23 MR. LEITER: OBJECTION TO THE COMMENTARY.
24 THE COURT: OUTSIDE THE PRESENCE, PLEASE. WE'LL
25 DISCUSS IT.
26 Q. BY MR. PIUZE: PHILIP MORRIS KNEW FROM THE
27 INSTANT IT STARTED MARKETING LIGHT CIGARETTES THAT IT REALLY
28 DIDN'T MAKE MUCH OF A DIFFERENCE AND KEPT ITS MOUTH SHUT,
4832
1 RIGHT?
2 A. I DON'T THINK THAT THAT'S -- THAT'S TRUE ABOUT
3 MARKETING CIGARETTES AND KEPT ITS MOUTH SHUT. YOU SAY THE
4 SUBMISSION -- I THINK IT WAS ON FRIDAY, IN TERMS OF WHAT THE
5 TOBACCO COMPANY SAID TO THE FTC -- AND THE FTC PRETTY MUCH,
6 ALMOST WORD FOR WORD ADOPTED THAT IN THEIR FINAL STATEMENT.
7 SO TO SAY THEY KEPT THEIR MOUTH SHUT, I WOULD
8 SAY THEY COMMUNICATED DIRECTLY TO THE RESPONSIBLE
9 GOVERNMENTAL AUTHORITY.
10 Q. I ASKED A BAD QUESTION.
11 A. I'M SORRY.
12 Q. DON'T BE. I ASKED THE BAD QUESTION.
13 PHILIP MORRIS KNEW THAT THE LIGHT CIGARETTES
14 WERE BASICALLY JUST AS DANGEROUS AS THE FULL STRENGTH
15 CIGARETTES AND KEPT ITS MOUTH SHUT TO THE CONSUMER FROM THE
16 BEGINNING?
17 THAT'S THE QUESTION I WANTED TO ASK.
18 A. I DON'T KNOW HOW TO ANSWER -- TO ANSWER THAT
19 QUESTION, BECAUSE I'M NOT SURE WHAT PHILIP MORRIS KNEW TO THE
20 EXTENT THAT IT HAD DATA THAT WOULD SUPPORT YOUR POSITION
21 YOU'RE TAKING WITH THAT QUESTION.
22 AS I SAID BEFORE, THE ONLY THINGS WE KNEW WERE
23 BASICALLY FOLLOWING THE RATHER STRONG SUGGESTION OF THE
24 SURGEON GENERAL AND OTHER PEOPLE ABOUT THE INVOLVEMENT OF
25 THESE LOWER TAR PRODUCTS. ANYTHING ELSE THAT WE GOT FROM
26 THAT WAS DERIVED FROM EPIDEMIOLOGY STUDIES AND SURGEON
27 GENERAL'S REPORTS.
28 Q. AT THE POINT THAT PHILIP MORRIS KNEW THAT THERE
4833
1 WASN'T REALLY ALL THAT MUCH DIFFERENCE BETWEEN THE HARM
2 CAUSED BY THE LIGHT CIGARETTES AND THE FULL STRENGTH
3 CIGARETTES, IT KEPT ITS MOUTH SHUT TO THE CONSUMER, DIDN'T
4 IT?

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A. WE KNEW NOTHING MORE THAN WHAT THE SCIENTIFIC COMMUNITY KNEW AT THE TIME THAT THEY KNEW IT.
Q. AT THE TIME THAT PHILIP MORRIS FIGURED OUT THAT THERE WASN'T THAT MUCH DIFFERENCE IN HARM BETWEEN LIGHT CIGARETTES AND FULL STRENGTH CIGARETTES, IT KEPT ITS MOUTH SHUT TO THE CONSUMERS, DIDN'T IT?
MR. LEITER: OBJECTION. HE'S ARGUING WITH THE WITNESS.
THE COURT: OVERRULED.
THE WITNESS: I THOUGHT I'VE ANSWERED THE QUESTION. THE TIME, WHICH IS THE TIME WE ARE RIGHT NOW, THE PUBLIC HEALTH COMMUNITY IS CHANGING ITS POSITION ON LOW-TAR CIGARETTES.
THAT CHANGE IN POSITION IS A RELATIVELY RECENT -- RECENT EVENT. THE INFORMATION WE HAD ON LOW-TAR CIGARETTES IS PRECISELY IN BOTH QUANTITY AND TIME-WISE COINCIDENTAL WITH WHAT EVERYBODY ELSE KNEW.
Q. SO --
A. BY EVERYBODY ELSE, I MEAN SCIENTISTS AND PUBLIC HEALTH PEOPLE.
Q. AFTER 30 YEARS OF MARKETING THIS NEW AND SUPPOSEDLY IMPROVED PRODUCT, PHILIP MORRIS IS JUST NOW FIGURING THIS OUT?
A. SO IS, APPARENTLY, THE SCIENTIFIC --

4834

Q. IS THAT A YES?
A. YES. YES.
Q. AND THAT'S BECAUSE OF ALL THE GREAT RESEARCH THAT IT'S BEEN CONDUCTING, RIGHT?
MR. LEITER: OBJECTION. ARGUMENT.
THE COURT: SUSTAINED. SUSTAINED.
MR. PIUZE: DONE. THANKS.
THE COURT: THANK YOU, COUNSEL.
MR. PIUZE: THANK YOU FOR YOUR PATIENCE.
THE COURT: VERY WELL.
MR. LEITER, YOUR WITNESS.
MR. LEITER: THANK YOU, YOUR HONOR.
THE COURT: YES, SIR.
MR. LEITER: GOOD MORNING, LADIES AND GENTLEMEN.

(CHORUS OF GOOD MORNING'S.)

REDIRECT EXAMINATION
BY MR. LEITER:
Q. WELCOME, DR. CARCHMAN. WELCOME BACK.
A. GOOD MORNING TO YOU. AND THANK YOU.
Q. I'M GOING TO TAKE NOT TOO MUCH OF YOUR TIME SO WE CAN FINISH YOU UP.
CAMBRIDGE CIGARETTES. MR. PIUZE JUST SUGGESTED TO YOU THAT THEY WERE 0.0 TAR CIGARETTES.
DID CAMBRIDGE CIGARETTES DELIVER NO TAR TO THE SMOKERS?
A. NO. THEY DELIVER TAR, BUT IT JUST --

4835

Q. THEN --
A. -- IT WAS BELOW THE TOLERANCE OF THE GOVERNMENT TEST.
Q. NOW, THE JURY'S SEEN A DOCUMENT EARLIER IN THE CASE FROM PHILIP MORRIS WHICH INDICATED THAT WHEN THE CAMBRIDGE WAS MEASURED ON THE FTC TEST, IT CAME OUT TO 0.0.
SO WHY IS IT THAT YOU SAY IT STILL DELIVERED SOME TAR TO THE SMOKER?
A. BECAUSE THE TOLERANCE OF THE FTC TEST DOESN'T

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10 GO BEYOND THAT DECIMAL POINT. SO IF YOU DID THAT, IT WOULD
11 BE 0.0 SOMETHING.
12 Q. SO IT STILL DELIVERED SOME SMALL -- SOME AMOUNT
13 OF TAR TO THE SMOKER, CORRECT?
14 A. YES.
15 Q. JUST NOT ENOUGH TO BE MEASURED BY THE FTC
16 MACHINE?
17 A. BY THE METHOD, YES.
18 Q. BY THE METHOD THEY WERE USING?
19 A. YES.
20 Q. OTHER CIGARETTES ON THE MARKET THAT DELIVER
21 THAT SMALL AMOUNT OF TAR TO THE SMOKER?
22 A. NOT THAT SMALL.
23 Q. OKAY. WAS CAMBRIDGE A SAFE CIGARETTE?
24 A. NO.
25 Q. STILL RISKY?
26 A. YES.
27 Q. STILL WOULD HAVE BEEN MARKETED WITH THE SURGEON
28 GENERAL'S WARNINGS -- STILL WAS MARKETED WITH THE SURGEON
4836
1 GENERAL'S WARNINGS?
2 A. YES.
3 Q. CAMBRIDGE WAS PUT ON THE MARKET?
4 A. YES.
5 Q. AND IT DIDN'T DO VERY WELL?
6 A. NO.
7 Q. WHY NOT?
8 A. AS I SAID, WHEN I DESCRIBED IT AS SUCKING ON A
9 BRICK, PROFESSOR WYNDER SAID ALMOST 25 YEARS AGO, A SAFER
10 CIGARETTE IS OF NO VALUE IF NOBODY WILL SMOKE IT. AND IF YOU
11 HAVE A HARD TIME LIGHTING THE THING AND YOU CAN'T DRAW ON IT,
12 PEOPLE JUST DIDN'T -- DIDN'T LIKE IT. SUCKING ON A BRICK IS
13 NOT WHAT I WOULD CALL SOMETHING THAT A SMOKER WOULD WANT TO
14 DO. AND THEY DIDN'T.
15 Q. PRODUCT DIDN'T DO WELL IN THE MARKETPLACE?
16 A. NO.
17 Q. NICOTINE AEROSOLS.
18 YOU MENTIONED THAT PHILIP MORRIS IS, TODAY,
19 WORKING ON SOME POTENTIAL PRODUCTS THAT WOULD INVOLVE AEROSOL
20 TECHNOLOGY; IS THAT RIGHT?
21 A. YES.
22 Q. AND THAT THERE ARE COMPETITORS, INCLUDING
23 PEOPLE IN THE PHARMACEUTICAL INDUSTRY, THAT ARE WORKING ON IT
24 AS WELL, RIGHT?
25 A. YES.
26 Q. COULD PHILIP MORRIS HAVE MARKETED THIS KIND OF
27 AEROSOL PRODUCT 20 YEARS AGO?
28 A. NO.
4837
1 Q. WHY NOT?
2 A. WELL, THE TECHNOLOGY WASN'T THERE. AND IN
3 FACT, THE TRIALS, THE CLINICAL TRIALS THAT ARE OUT THERE, ARE
4 STILL QUESTIONING THAT THERE IS A NICOTINE INHALER THAT'S
5 USED FOR SMOKING CESSATION, BUT IT DOESN'T GET INTO THE
6 LUNGS. SO IT'S -- CONCEPTUALLY, IT'S AN INTERESTING -- AN
7 INTERESTING IDEA, AND THERE ARE CLINICAL TRIALS UNDERWAY TO
8 SEE IF IT WILL WORK.
9 MR. LEITER: MR. PIUZE, CAN I BORROW YOUR CIGARETTE
10 PACKS FOR A MOMENT?
11 MR. PIUZE: I DON'T SMOKE ANYMORE.
12 MR. LEITER: THE RED AND THE GOLD THAT YOU USED
13 YESTERDAY.
14 DO YOU MIND?

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MR. PIUZE: NOT AT ALL.
Q. BY MR. LEITER: YOU AND PLAINTIFF'S COUNSEL SPENT A FAIR AMOUNT OF TIME TALKING ABOUT THESE TWO PACKS OF CIGARETTES YESTERDAY.
DO YOU REMEMBER?
A. I DO, YES.
Q. OKAY. THIS IS MARLBORO RED, WHICH IS THE HIGHER TAR OF THE TWO CIGARETTES; ISN'T THAT CORRECT?
A. ABOUT 15 MILLIGRAMS.
Q. DOES THIS HAVE BIOLOGICAL ACTIVITY?
A. YES.
Q. THIS IS MARLBORO GOLD, MARLBORO LIGHTS, THE LOWER TAR OF THESE TWO BRANDS?
A. THAT'S RIGHT.

4838

Q. DOES THIS HAVE BIOLOGICAL ACTIVITY?
A. YES, SIR.
Q. HAS THAT BEEN KNOWN FOR A LONG TIME?
A. YES.
Q. JUST TO PHILIP MORRIS?
A. NO. NO. IT'S BEEN PUBLISHED IN THE OPEN LITERATURE.
Q. IS THERE A LABORATORY TEST THAT WILL TELL YOU WHETHER THE MARLBORO GOLD IS LESS RISKY TO SMOKERS THAN THE MARLBORO RED?
A. NO.
Q. WAS THERE A LABORATORY TEST 20 OR 30 YEARS AGO THAT WOULD TELL YOU WHETHER THE MARLBORO GOLD WAS LESS RISKY THAN THE MARLBORO RED?
A. AND THERE ISN'T ONE TODAY.
Q. IN FACT, TESTING HAS SHOWN THAT THE COMPONENTS OF THE TAR IN MARLBORO GOLD ARE THE SAME AS THE COMPONENTS OF THE TAR IN THE MARLBORO RED; IS THAT RIGHT?
A. YES, SIR.
Q. THE DIFFERENCE IS THE MARLBORO GOLD HAS LESS OF IT -- LESS TAR?
A. IT WILL DELIVER LESS TAR.
Q. IT WILL DELIVER LESS TAR; IS THAT RIGHT?
A. YES.
Q. AND THAT'S THE BASIS FOR THE SCIENTIFIC COMMUNITY'S PREMISE THAT MAKES THESE GOLD AND PUTTING THEM ON THE MARKET WOULD BE A GOOD THING TO DO, RIGHT?
A. YES.

4839

Q. OKAY. SO TESTING MARLBORO RED OR MARLBORO GOLD FOR BIOLOGICAL ACTIVITY 20 OR 30 YEARS AGO, WOULD THAT HAVE TOLD PHILIP MORRIS VERY MUCH?
A. IT WOULDN'T HAVE TOLD THEM ANYTHING. IT WOULD NOT HAVE BEEN INFORMATIVE.
Q. OKAY. NOW, YESTERDAY, PLAINTIFF'S COUNSEL SHOWED YOU THIS DOCUMENT, WHICH IS FTC MONOGRAPH 7.
DO YOU REMEMBER LOOKING AT THAT -- SHOWED YOU A SMALL PIECE OF THIS DOCUMENT YESTERDAY.
DO YOU REMEMBER THAT?
A. YES.
Q. AND IT'S DEFENDANTS' EXHIBIT 5325.
AND TELL US AGAIN WHAT THE FTC MONOGRAPH 7 WAS OR IS?
A. IT'S NO. 7, WHICH MEANS IT'S NO. 7 IN THE SERIES. THERE'S UP TO ABOUT 14 OR 15. AND IT IS A CONTINUING EFFORT BY THE GOVERNMENT. IT'S NOT JUST THE FEDERAL TRADE COMMISSION. THE NATIONAL CANCER INSTITUTE IS HEAVILY INVOLVED IN THIS. AND IT IS PRACTICALLY AN ANNUAL

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EVENT OF BRINGING TOGETHER THE TOP SCIENTISTS IN THE FIELD TO PRESENT AND DISCUSS CURRENT ISSUES RELATING TO SMOKING, AND AS IT SAYS UP THERE, TOBACCO CONTROL.
Q. SMOKING AND TOBACCO CONTROL. AND THIS DOCUMENT WAS PUT OUT BY THE FEDERAL GOVERNMENT, NATIONAL INSTITUTES OF HEALTH, NATIONAL CANCER INSTITUTE?
A. YES.
Q. WHEN DID THIS DOCUMENT COME OUT?
A. '96.

4840

Q. NOW, WHEN YOU REFERRED -- WHEN YOU WERE DISCUSSING THIS ARTICLE WITH COUNSEL AND ABOUT DR. SAMET -- WHO IS DR. SAMET?
A. HE WAS THE CHAIRMAN OF EPIDEMIOLOGY IN THE SCHOOL OF PUBLIC HEALTH AND HYGIENE AT JOHN HOPKINS UNIVERSITY.
Q. FRIEND OF THE TOBACCO INDUSTRY?
A. AVID TOBACCO CONTROL. HE'S BEEN A WITNESS AGAINST THE TOBACCO INDUSTRY FOR SEVERAL YEARS.
Q. AND HE PUBLISHED IN THIS FTC MONOGRAPH NO. 7; ISN'T THAT RIGHT?
A. YES.
Q. AND IS THIS THE FIRST PAGE OF THAT CHAPTER?
A. YES.
Q. IT'S CALLED, "THE CHANGING CIGARETTE AND DISEASE RISK: CURRENT STATUS OF THE EVIDENCE," BY JONATHAN SAMET.
AND I WANT TO DIRECT YOUR ATTENTION TO ONE SENTENCE THAT HE WROTE THERE.
(READING:)

"ONLY EPIDEMIOLOGIC STUDIES CAN PROVIDE INFORMATION ON MODIFICATION OF THE RISKS OF SMOKING AS THE CIGARETTE HAS EVOLVED, AND ONLY EPIDEMIOLOGIC DATA CAN MEASURE THE RISKS OF CIGARETTES UNDER THE 'NATURAL' CIRCUMSTANCES OF USE."

4841

WHAT DOES THAT MEAN?
A. IT SEEMS TWO THINGS.
ONE, THERE IS NO LABORATORY TEST, IF YOU TESTED MARLBORO RED AND MARLBORO GOLD, THAT COULD TELL YOU WHETHER ONE WAS RISKY OR SAFER THAN THE OTHER.
THE SECOND PART, THE NATURAL CIRCUMSTANCES, BASICALLY EMBRACES ALL ASPECTS OF SMOKING BEHAVIOR, COMPENSATION, HOWEVER PEOPLE WANT TO SMOKE THE PRODUCT OVER THE COURSE OF THEIR SMOKING CAREERS. OKAY.
SO IT TAKES INTO ACCOUNT ALL OF THE THINGS THAT MR. PIUZE AND I WERE DISCUSSING, AND PROBABLY SOME OTHER THINGS THAT NOBODY HAS THOUGHT OF JUST YET. SO IT EMBRACES OVER 20 OR 30 OR MORE YEARS HOW THE SMOKER USES THE PRODUCT.
Q. NO LABORATORY TEST. AND THE ONLY WAY FOR PHILIP MORRIS AND THE SCIENTIFIC COMMUNITY AND THE GOVERNMENT TO FIND OUT WHETHER LOW TAR REDUCES RISKS OVER TIME HAS BEEN TO LOOK AT THESE EPIDEMIOLOGICAL STUDIES; IS THAT RIGHT?
A. THAT'S RIGHT. AND THAT'S WHAT HE'S SAYING.
Q. AND WHEN YOU'RE LOOKING AT STUDIES OVER 20 YEARS OF SMOKING BEHAVIOR, YOU'RE LOOKING AT HOW PEOPLE SMOKE THE CIGARETTES, RIGHT?
A. THAT'S RIGHT.
Q. SO WHETHER THERE IS COMPENSATION, NOT COMPENSATION, LONG-TERM COMPENSATION, SHORT-TERM

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25 COMPENSATION, IT'S ALL GOING TO COME OUT -- IT'S ALL GOING TO
26 WASHOUT IN THE EPIDEMIOLOGICAL DATA; ISN'T THAT RIGHT?
27 A. YES, SIR.
28 Q. OKAY. NOW, IN 19 -- LET ME WITHDRAW THAT.
4842
1 NOW, AS YOU WERE DISCUSSING EARLIER IN YOUR
2 TESTIMONY, PHILIP MORRIS MADE AND MARKETED LOW-TAR CIGARETTES
3 BECAUSE IT WAS ENCOURAGED TO DO SO BY THE GOVERNMENT AND THE
4 PUBLIC HEALTH COMMUNITY, CORRECT?
5 A. YES.
6 Q. AND FOR MANY, MANY YEARS, THERE WAS A CONSENSUS
7 THAT DOING THAT WAS A GOOD THING; IS THAT RIGHT?
8 A. YES.
9 Q. OKAY. AND IN FACT, YOU TALKED ABOUT THE
10 SURGEON GENERAL'S REPORTS WHICH CONCLUDED, AS YOU HAD, THAT
11 THERE WAS SOME RISK REDUCTION, ALTHOUGH NOT AS MUCH AS
12 EVERYBODY HAD HOPED FOR; IS THAT CORRECT?
13 A. YES.
14 Q. DID DR. SAMET DISCUSS RISK REDUCTION IN THIS
15 CHAPTER?
16 A. YES.
17 Q. I'M GOING TO SHOW YOU ANOTHER PAGE FROM THIS
18 SAME FEDERAL GOVERNMENT FTC MONOGRAPH, AND THIS IS 1996
19 AGAIN?
20 A. YES.
21 Q. AND THIS IS DR. SAMET, "CONCLUSIONS."
22 "THE HEALTH CONSEQUENCES OF SMOKING: THE
23 CHANGING CIGARETTE: A REPORT OF THE SURGEON GENERAL."
24 THAT'S THE 1981 SURGEON GENERAL'S REPORT THAT
25 YOU HAD REFERRED TO?
26 A. YES.
27 Q. (READING:)
28
4843
1 . . ."OFFERED CONCLUSIONS ON
2 THESE THREE MAJOR CLASSES OF DISEASE."
3
4 AND WE'LL ONLY LOOK AT THE FIRST ONE, WHICH IS
5 LUNG CANCER.
6 (READING:)
7
8 "DO THESE CONCLUSIONS REMAIN
9 TENABLE IN LIGHT OF MORE RECENT EVIDENCE?"
10
11 SO HE'S ASKING WHETHER THE '81 SURGEON
12 GENERAL'S CONCLUSION IS STILL VALID IN 1996; IS THAT CORRECT?
13 A. YES.
14 Q. (READING:)
15
16 "WITH REGARD TO CANCER, THE
17 REPORT CONCLUDED THAT" --
18
19 AND THIS IS A QUOTE FROM THE '81 SURGEON
20 GENERAL'S REPORT.
21 (READING:)
22
23 -- "TODAY'S FILTER-TIPPED,
24 LOWER 'TAR' AND NICOTINE CIGARETTES PRODUCE
25 LOWER RATES OF LUNG CANCER THAN DO THEIR
26 HIGHER 'TAR' AND NICOTINE PREDECESSORS."
27
28 SO THERE IS SOME RISK BENEFIT, YES?
4844

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A. THAT'S WHAT IT SAYS, YES.
Q. (READING:)

"NONETHELESS" -- AND I'M READING AGAIN -- "SMOKERS OF LOWER 'TAR' AND NICOTINE CIGARETTES HAVE MUCH HIGHER LUNG CANCER INCIDENCE AND MORE THAN DO NONSMOKERS."

SO THERE'S STILL A SIGNIFICANT RISK, CORRECT?
A. YES.
Q. AND THEN DR. SAMET WRITES (READING):

"THE MORE RECENT CASE-CONTROL EVIDENCE REMAINS CONSISTENT WITH THE FIRST COMPONENT OF THIS CONCLUSION."

WHAT DOES THAT MEAN?
A. THAT IN 1996, THE YEAR OF THIS REPORT, IN DR. SAMET'S OPINION, THE CONCLUSIONS OF THE '81 SURGEON GENERAL'S REPORT REGARDING LOW TAR WERE STILL TRUE WHEN THIS REPORT IN '96 WAS ISSUED.
Q. NOW, I WANT TO TAKE JUST A MINUTE AND TRY TO CLARIFY WHAT WE MEAN WHEN WE SAY, THESE DO SOMEWHAT REDUCE RISK; THESE, BEING THE LOWER TAR CIGARETTES.
MARLBORO RED IS A RISKY PRODUCT, CORRECT?
A. YES.
Q. CAUSES DISEASE?

4845

A. YES.
Q. MARLBORO GOLD, LOWER TAR, RISKY PRODUCT, YES?
A. YES.
Q. CAUSES DISEASE?
A. YES.
Q. BY SWITCHING FROM A HIGHER TAR TO A LOWER TAR CIGARETTE, DOES THAT MEAN THAT ANY INDIVIDUAL SMOKER IS NOT GOING TO GET SICK?
A. THERE'S NO WAY TO ANSWER THAT. THE ANSWER WOULD PROBABLY BE, YOU COULDN'T TELL. I WOULD SAY NO.
Q. OKAY. BECAUSE WE'RE LOOKING AT POPULATION STUDIES, EPIDEMIOLOGIC STUDIES.
THOSE ARE LOOKING AT LARGE GROUPS OF POPULATIONS, CORRECT?
A. YES.
Q. AND WHAT THE EPIDEMIOLOGY SHOWS IS THAT FEWER PEOPLE WHO SMOKE THE LOWER TAR CIGARETTES GET SICK THAN DO PEOPLE WHO SMOKE THE HIGHER TAR CIGARETTES; IS THAT CORRECT?
A. FOR LUNG CANCER.
Q. FOR LUNG CANCER, YES?
A. YES.
Q. SO WE'RE LOOKING AT POPULATION AND BY REDUCING RISK, IT MEANS THAT FEWER PEOPLE IN THE POPULATION OF LOWER TAR CIGARETTE SMOKERS WILL GET SICK, RIGHT?
A. THAT'S CORRECT.
Q. BUT IT DOESN'T TELL YOU WHAT HAPPENS TO ANY INDIVIDUAL?
A. CAN'T DO THAT.

4846

Q. AND THERE'S STILL, AS YOU'VE TOLD US, SIGNIFICANT REMAINING RISK?
A. YES.
Q. OKAY. NOW, YOU WERE ALSO ASKED BY MR. PIUZE SOME FOLLOW-UP QUESTIONS ON THE MORE RECENT PROSPECTIVE STUDY

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6 THAT PHILIP MORRIS HAS UNDERTAKEN; IS THAT CORRECT?
7 A. YES.
8 Q. AND PHILIP MORRIS HAS UNDERTAKEN THAT STUDY
9 BECAUSE THE QUESTIONS CONCERNING LOW-TAR CIGARETTES HAVE
10 CHANGED IN RECENT YEARS; IS THAT CORRECT?
11 A. YES.
12 Q. HAVE THEY CHANGED JUST FOR PHILIP MORRIS?
13 A. OH, ABSOLUTELY NOT.
14 Q. WHAT DID THEY CHANGE FOR?
15 A. WELL, THEY'VE CHANGED FOR MANY OF THE PRINCIPAL
16 ORGANIZATIONS AND SCIENTISTS AND PUBLIC HEALTH OFFICIALS IN
17 THE WORLD.
18 Q. NOW, WE SAW THE FTC MONOGRAPH, AND WE'VE HAD A
19 LOT OF DISCUSSION ABOUT HOW THE QUESTION HAS CHANGED AND HOW
20 PHILIP MORRIS IS NOW UNDERTAKING THAT STUDY.
21 IS THE STUDY BEING UNDERTAKEN -- HAS THE
22 QUESTION CHANGED BECAUSE PHILIP MORRIS HAS A NEW POSITION ON
23 CAUSATION AND ADDICTION?
24 A. NO.
25 Q. SCIENCE HAS EVOLVED INDEPENDENT OF WHAT
26 PHILIP MORRIS WAS SAYING ABOUT CAUSATION AND ADDICTION; ISN'T
27 THAT RIGHT?
28 A. THAT'S CORRECT.
4847
1 MR. LEITER: WOULD YOU PLEASE PUT UP A CHART, WHICH IS
2 NO. 2, WHICH IS THE INGREDIENTS, AND THIS HAS BEEN MARKED AS
3 DEFENDANTS' EXHIBIT 11,050.
4 Q. AND AGAIN, DR. CARCHMAN, WHAT IS THIS CHART?
5 A. THIS IS A FLOW CHART OF THE MAJORITY OF THE
6 PROCESSES THAT PHILIP MORRIS HAS BEEN ENGAGED IN FOR
7 EVALUATING INGREDIENTS.
8 Q. THESE ARE SOME OF THE STEPS, BUT I THINK YOU
9 EVEN SAID THEY WEREN'T ALL OF THE STEPS THAT PHILIP MORRIS
10 UNDERTAKES TO TEST INGREDIENTS IT'S PUTTING INTO CIGARETTES;
11 IS THAT CORRECT?
12 A. THAT'S CORRECT.
13 Q. OKAY. PHILIP MORRIS HAS BEEN CONDUCTING THESE
14 TESTS FOR MANY YEARS?
15 A. OVER 20 YEARS.
16 Q. CONDUCTS THEM OF ALL THE INGREDIENTS?
17 A. ALL THE INGREDIENTS WE USE, YES.
18 Q. YES. AND CONDUCTED EACH TEST WITH EACH
19 INGREDIENT INDIVIDUALLY?
20 A. YES.
21 Q. AND IN COMBINATION WITH ALL OF THE OTHER
22 FLAVORANTS AND INGREDIENTS THAT GO INTO THE CIGARETTES?
23 A. YES.
24 Q. PART OF THE ART OF TESTING?
25 A. I WOULD SAY PROBABLY BEYOND -- BEYOND STATE OF
26 THE ART IN THAT THIS TESTING IS DONE IN COMPLIANCE WITH BOTH
27 NATIONAL AND INTERNATIONAL TESTING GUIDELINES.
28 Q. PHILIP MORRIS DOES NOT JUST GET TO MAKE UP HOW
4848
1 IT'S GOING TO TEST OR WHAT'S APPROPRIATE IN TESTING
2 INGREDIENTS IT PUTS IT IN, RIGHT?
3 A. NOR HOW IT TESTS IT OR HOW IT ANALYZES DATA.
4 ALL THESE THINGS ARE STANDARD -- THEY'RE NATIONALLY,
5 INTERNATIONALLY RECOGNIZED GUIDELINES FOR DOING THAT, AND WE
6 COMPLY WITH THOSE GUIDELINES.
7 MR. LEITER: YOU CAN TAKE THAT DOWN, PLEASE.
8 Q. NOW, IN ADDITION TO TESTING THE INGREDIENTS,
9 PHILIP MORRIS ALSO TESTS THE WHOLE PACKAGE WHEN IT MAKES A
10 CHANGE, THE WHOLE CIGARETTE, TO SEE WHETHER IT HAS AFFECTED

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11 OVERALL BIOLOGICAL ACTIVITY; ISN'T THAT CORRECT?
12 A. YES.
13 Q. AND WHAT'S THE PURPOSE OF DOING THAT?
14 A. WELL, I THINK -- THE GRAPHIC YOU PUT UP IS A
15 STEPWISE, LOGICAL WALK THROUGH OF THE THINKING. THE
16 INDIVIDUAL MATERIAL WITHOUT HEAT, BURNING IT, DOING SOME
17 OTHER THINGS. BUT AT THE END OF THE DAY, WE NEEDED TO KNOW
18 WHAT HAPPENED WHEN WE PUT THE THING INTO A CIGARETTE AND
19 ACTUALLY SMOKED IT.
20 Q. OKAY. NOW, WHEN PHILIP MORRIS IS MAKING THAT
21 COMPARISON, IT COMPARES THE PROPOSED CHANGE TO WHAT YOU'VE
22 REFERRED TO IN THE PAST AS RESEARCH CIGARETTES; IS THAT
23 RIGHT?
24 A. REFERENCE CIGARETTES.
25 Q. REFERENCE CIGARETTES. I'M SORRY. I THINK THE
26 PACKAGE CALLS THEM RESEARCH CIGARETTES. SAME THING?
27 A. YES.
28 Q. OKAY. AND THESE WERE DEVELOPED BY THE
4849
1 UNIVERSITY OF KENTUCKY; IS THAT CORRECT?
2 A. AND THE NATIONAL CANCER INSTITUTE, AND THE
3 UNITED STATES DEPARTMENT OF AGRICULTURE.
4 Q. NOW, WHY USE REFERENCE CIGARETTES INSTEAD OF,
5 SAY, A MARLBORO RED OR A MARLBORO GOLD?
6 A. THE QUESTION WE'RE ASKING IS A SCIENTIFIC
7 QUESTION. THAT IS, IS THE CHANGE DOING ANYTHING, OR WHAT
8 KIND OF CHANGE MIGHT THIS NEW INGREDIENT OR MORE OF THE
9 INGREDIENT OR SOME CONFIGURATION CHANGE DO TO IT?
10 AND THESE REFERENCE CIGARETTES, AS I SAID IN
11 PREVIOUS TESTIMONY HERE, WERE REALLY DEVELOPED AS PART OF THE
12 TOBACCO WORKING GROUP, WHICH WAS LOOKING AT THE SAME KINDS OF
13 QUESTIONS USING SIMILAR TYPES OF TESTS.
14 Q. I HAVE TO INTERRUPT FOR A SECOND.
15 THE WORKING GROUP WAS WHAT?
16 A. WAS PART OF THE NATIONAL CANCER INSTITUTE. IT
17 WAS IN PLACE FOR ABOUT TEN YEARS. AND IT USED A VARIETY OF
18 REFERENCE CIGARETTES IN TERMS OF EVALUATING WHETHER WHATEVER
19 MODIFICATION THEY THOUGHT WAS GOING TO BE GOOD WAS ACTUALLY
20 MOVING IT IN THE RIGHT DIRECTION OR THE WRONG DIRECTION.
21 NOW, IF YOU HAVE THESE CIGARETTES, ONE, YOU'RE
22 ABLE TO ATTEMPT TO REPEAT WHAT SOMEBODY ELSE HAS DONE, WHICH
23 IS A VERY IMPORTANT THING IN SCIENCE.
24 THE SECOND THING THAT'S IMPORTANT IS THAT
25 ANYBODY CAN EXTEND THE STUDIES THAT YOU'RE DOING WITH THESE
26 CIGARETTES. IT IS A STANDARD. AND NOT ONLY WERE WE USING
27 THEM AND ARE USING THEM, THEY'RE STILL BEING USED BY OUTSIDE
28 PEOPLE WHO CONTINUE TO ASK THE SAME KIND OF QUESTIONS OR
4850
1 NEWER QUESTIONS AND NEWER MODEL SYSTEMS, BUT IT IS THE
2 STANDARD RESEARCH CIGARETTE, THE REFERENCE CIGARETTE IS.
3 THERE ARE SEVERAL DIFFERENT KINDS. IT DEPENDS
4 ON THE SPECIFIC QUESTION YOU'RE ASKING. BUT IT'S STILL BEING
5 USED. IT'S STILL BEING PUBLISHED IN THE PEER-REVIEWED
6 LITERATURE, NOT JUST BY PHILIP MORRIS, BUT BY PEOPLE HERE IN
7 THE STATE OF CALIFORNIA. UC AT RIVERSIDE, UC AT IRVINE.
8 THERE ARE SCIENTISTS WHO CONTINUE TO PUBLISH EXTENSIVELY
9 USING THESE CIGARETTES.
10 Q. NOW, THIS PARTICULAR PACKAGE OF RESEARCH
11 CIGARETTES -- IT'S A LITTLE HARD TO SEE WITH THE CELLOPHANE.
12 IT'S CALLED CODE 1R4F.
13 ARE THERE OTHER TYPES OF REFERENCE CIGARETTES?
14 A. OH, YES. THE 1R4F MEANS IT'S FILTERED.
15 THE 1R4 BASICALLY TELLS ME IT'S ABOUT A

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10-MILLIGRAM TAR CIGARETTE. THERE ARE NON-FILTERED
CIGARETTES, SO IT DOES NOT HAVE THE "F" ON IT. THERE ARE
HIGHER TAR REFERENCE CIGARETTES AND LOWER REFERENCE -- LOWER
TAR CIGARETTES THAN THIS. THE 1R5F IS A 2- TO 3-MILLIGRAM
TAR CIGARETTE AND THAT'S FILTERED.
SO YOU HAVE ALL OF THESE DIFFERENT REFERENCE
CIGARETTES THAT WERE DESIGNED BY THE GOVERNMENT TO TRY TO
MATCH THE COMMERCIAL MARKETPLACE IN THE UNITED STATES. AND
IT HAS THE SAME KIND OF -- THE SAME KIND OF TOBACCO BLEND,
THE SAME KIND OF VENTILATION, THE SAME KIND OF FILTER.
Q. AND ARE REFERENCE CIGARETTES COMPARABLE TO OR
REPRESENTATIVE OF COMMERCIAL CIGARETTES?
A. TO THE EXTENT THAT IN ANY CHEMICAL, YOU MEASURE
4851
THE STUFF THAT COMES OUT WHEN YOU BURN IT. IN ANY OF THE
BIOLOGICAL TESTS, THEY GIVE YOU ACTIVITY THAT IS
INDISTINGUISHABLE FROM THE COMMERCIAL -- THE COMPARABLE
COMMERCIAL PRODUCT.
Q. INDISTINGUISHABLE FROM THE COMPARABLE
COMMERCIAL PRODUCT?
A. SO IF YOU TOOK A 10-MILLIGRAM COMMERCIAL
CIGARETTE CHEMICALLY AND BIOLOGICALLY FOR THE CONSTITUENTS
THAT PEOPLE ARE WORRIED ABOUT, YOU WOULDN'T SEE ANY
DIFFERENCE. BIOLOGICALLY, NO ONE'S BEEN ABLE TO DEMONSTRATE
A DIFFERENCE.
Q. OKAY. LET'S TURN TO AMMONIA.
MR. PIUZE ASKED YOU ABOUT THE ALLEGATIONS THAT
AMMONIA SOMEHOW FREES UP MORE NICOTINE IN THE SMOKE.
DO YOU REMEMBER THAT?
A. YES.
Q. AND HE TALKED ABOUT THE ALLEGATION BEING MADE
BY, AMONG OTHERS, COMPETITORS OF PHILIP MORRIS, REYNOLDS AND
BROWN & WILLIAMSON, RIGHT?
A. YES.
Q. NOW, IS IT FAIR TO SAY THAT THE ALLEGATION IS
THAT THE AMMONIA INCREASES THE PH OF THE SMOKE?
A. MAKES IT MORE BASIC, YES.
Q. THAT'S THE ALLEGATION?
A. YES.
Q. AND THAT THAT SUPPOSEDLY FREES UP MORE
NICOTINE?
A. RIGHT. IT WOULD HAVE TO BE -- PH RUNS UP TO
4852
14, 14 BEING THE MOST BASIC. 7 BEING NEUTRAL.
Q. UH-HUH.
A. OKAY. SO THINGS THAT MOVE BETWEEN 7 AND 14 ARE
GOING TO RAISE THE PH, MAKE IT MORE BASIC.
Q. AND THAT SOMEHOW FREES UP MORE NICOTINE, RIGHT?
A. YES.
Q. AND THAT WAS STUDIED BY PHILIP MORRIS'
COMPETITORS, AS I THINK MR. PIUZE SUGGESTED, TO TRY TO FIND
OUT WHY MARLBORO WAS DOING BETTER IN THE MARKETPLACE?
A. YES.
Q. BACK IN THE '70'S?
A. YES.
Q. OKAY. NOW, IF THE ALLEGATION WERE TRUE, WOULD
YOU EXPECT MARLBORO TO HAVE A HIGHER PH CONTENT IN SMOKE THAN
ITS COMPETITORS?
A. IF WHAT MR. PIUZE WAS SAYING WAS CORRECT, THAT
WOULD BE THE PREDICTION.
Q. OKAY. YOU MENTIONED A REPORT BY A DR. RICKERT.
AND WHO WAS DR. RICKERT?
A. IS. BILL RICKERT --

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Q. I'M SORRY. I DIDN'T MEAN TO SUGGEST HE'S NO LONGER WITH US.
WHO IS DR. RICKERT?
A. HE IS THE PRESIDENT OF LABSTAT, WHICH IS ONE OF THE PRINCIPAL INDEPENDENT LABORATORIES IN THE WORLD THAT DOES CIGARETTE TESTING, AND THIS REPORT WAS DONE BY HIM AT THE REQUEST OF DR. GREG CONNELLY, WHO'S THE HEAD OF THE DEPARTMENT OF PUBLIC HEALTH IN THE COMMONWEALTH OF

4853

MASSACHUSETTS.
Q. THIS REPORT WASN'T DONE FOR THE TOBACCO COMPANIES, WAS IT?
A. NO.
Q. THIS WAS DONE FOR THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH?
A. YES.
Q. AND IS THIS THE REPORT?
A. YES.
Q. I SEE THAT IT IS DATED -- IT'S HARD TO READ AT THE BOTTOM LEFT -- BUT IT'S JANUARY 30, 1997. THIS IS DEFENSE EXHIBIT 5514.

(I.D. 5514 - 1-30-97 REPORT)

Q. DR. CARCHMAN, I WANT YOU TO TAKE A LOOK AT A CHART THAT'S ON PAGE 12. IT'S CALLED TABLE 2.
ARE YOU FAMILIAR WITH THIS CHART?
A. YES.
Q. WHAT IS THE CHART MEASURING AND WHAT DOES IT TELL YOU?
A. HERE, YOU HAVE THE COMMERCIAL BRANDS, AND THESE WERE PICKED UP OUT OF STORES IN THE COMMONWEALTH OF MASSACHUSETTS. AND THEY WERE SMOKED.
IN THIS PARTICULAR TABLE, YOU HAVE DATA ON THE AMOUNT OF NICOTINE PER CIGARETTE, AN AVERAGE PH OF THE SMOKE, THE NICOTINE CONTENT OF THE TOBACCO AND THEN THE RATIO OF THE SMOKE NICOTINE TO THE TOBACCO NICOTINE.

4854

Q. OKAY. NOW, YOU MENTIONED ONE OF THE THINGS THEY LOOKED AT FROM THESE BRANDS WAS AVERAGE PH. AND IS THAT WHAT WE'VE JUST BEEN TALKING ABOUT?
A. WE WERE TALKING ABOUT PH. BUT IF I MIGHT, MR. LEITER.
Q. PLEASE.
A. AN IMPORTANT ASPECT OF THIS IS THAT WHAT DR. CONNELLY WANTED AND DR. RICKERT DID WAS TO SMOKE THESE CIGARETTES NOT SIMPLY UNDER FTC CONDITIONS, BUT TO SMOKE THEM UNDER EXAGGERATED CONDITIONS WHERE YOU --
Q. WHAT DO YOU MEAN BY EXAGGERATED CONDITIONS?
A. -- WHERE YOU WOULD BLOCK SOME OF THE VENTILATION HOLES, AND THERE WOULD BE LARGER PUFFS WITH A SHORTER FREQUENCY. SOMETHING THAT WOULD MAYBE MEASURE THE WAY SOME PEOPLE SMOKE.
FOR MR. PIUZE'S POINT, IF THEY WERE COMPENSATING, THESE WERE THE KINDS OF THINGS THAT THEY WOULD DO. SO HE LOOKED AT IT AT LEAST UNDER TWO DIFFERENT CONDITIONS.
Q. NOW, IF THIS AMMONIA ALLEGATION WERE TRUE, WOULD ONE EXPECT MARLBORO TO HAVE A HIGHER AVERAGE PH THAN THE OTHER BRANDS?
A. I WOULD MAKE TWO PREDICTIONS. ONE, THE PH SHOULD BE ABOVE 7, AND, TWO, IT SHOULD BE THE HIGHEST PH THERE.

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Q. AND WHY SHOULD IT BE ABOVE 7?
A. 7 IS -- IS CONSIDERED BY EVERY SCIENTIST IN THE WORLD AS BEING THE NEUTRAL PH. AND WHEN YOU GET ABOVE 7, YOU

4855

START TO GET TO THE BASIC SIDE.
THE BODY'S PH, AS I THINK I SAID, IS 7.4.
OKAY. AND IT IS WELL KNOWN, NOT -- IN CHEMISTRY THAT AT THIS KIND OF PH -- AND THE SURGEON GENERAL SAID THIS, I BELIEVE, IN 1988 AS WELL -- THAT THE NICOTINE IS PRIMARILY GOING TO BE IN THE CHARGED FORMS AND NOT IN THE UNCHARGED FORM.
WHICH, JUST TO MAKE IT CLEAR TO THE JURY, THE UNCHARGED FORM IS WHAT I BELIEVE MR. PIUZE WAS REFERRING TO WHEN HE SAID FREE-BASE. THAT'S THE UNCHARGE. SO IT'S SITTING MOSTLY IN THE CHARGED FORM, WHICH DOESN'T BEHAVE LIKE THIS UNCHARGED OR WHAT MR. PIUZE CALLS FREE-BASE FORM.
Q. OKAY. NOW, LET'S TAKE A LOOK AT WHAT WAS FOUND.
MARLBORO'S AVERAGE PH, FIRST OF ALL, IS NOT ABOVE 7, IS IT?
A. NO. IT'S ON THE ACIDIC SIDE.
Q. AND HOW DOES IT COMPARE WITH THE AVERAGE PH OF THE OTHER BRANDS, WHICH INCLUDE -- I SEE SOME REYNOLDS AND SOME BROWN & WILLIAMSON BRANDS?
A. IT'S NOT THE HIGHEST AND IT'S NOT THE LOWEST.
AND I CAN MAKE ONE OTHER POINT HERE.
THAT IN 1988, WHEN THE SURGEON GENERAL FOCUSED ON NICOTINE, THEY ALSO SHOWED THAT EVERY TIME YOU PUFF ON AN AMERICAN COMMERCIAL CIGARETTE, THE PH GETS LOWER EVERY PUFF.
SO IT GETS MORE ACIDIC -- THE SMOKE GETS MORE ACIDIC EVERY TIME YOU TAKE A PUFF, AND THAT'S TRUE FOR MARLBORO AS WELL.
Q. BY THE WAY, THIS WAS DONE IN THE LATE 1970'S. SAME MARLBORO AS 20 YEARS AGO?

4856

A. YES.
Q. NOW, MR. PIUZE ALSO RAISED SOME ISSUES ABOUT DR. BENOWITZ. YOU HAD TESTIFIED, I BELIEVE, ON DIRECT THAT DR. BENOWITZ HAD WRITTEN THAT COMPENSATION WAS A SHORT-TERM PHENOMENON, CORRECT?
A. YES.
Q. NOW, THE ARTICLE THAT I SHOWED YOU IN DIRECT EXAMINATION IS DEFENSE EXHIBIT 5193.
DO YOU REMEMBER SEEING THAT?
A. YES.
Q. AND THAT'S FROM "THE NEW ENGLAND JOURNAL OF MEDICINE" IN 1994; IS THAT CORRECT?
A. YES, SIR.
Q. AND WE LOOKED AT THIS QUOTE. AND I WON'T GO THROUGH THE QUOTE AGAIN. BUT IT DOES SAY THAT OVERCOMPENSATION APPEARS TO PERSIST FOR ONLY DAYS OR WEEKS. OVERSMOKING APPEARS NOT TO PERSIST.
WAS THAT PART OF THE BASIS FOR WHAT YOU WERE TESTIFYING TO ABOUT DR. BENOWITZ?
A. YES.
Q. NOW, I NOTICE THAT THERE ARE SOME VERY SMALL NUMBERS AFTER THE WORD "PERSIST" IN THIS QUOTE. NOW, I'VE LOST FOCUS OF THEM.
WHAT DO THOSE NUMBERS MEAN?
A. THOSE ARE WHAT ARE CALLED REFERENCES. AND SO IF YOU GO TO THE END OF THE ARTICLE, EACH NUMBER REPRESENTS A NUMBER HERE. AND IT REPRESENTS, IN THIS CASE, TWO PEER-REVIEWED PUBLISHED ARTICLES THAT SUPPORT THE STATEMENT

4857

THAT DR. BENOWITZ MADE. AND NEITHER ONE OF THOSE TWO

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ARTICLES WAS DR. BENOWITZ CO-AUTHOR OF.
SO THESE ARE ARTICLES THAT HE HAS READ THAT
HAVE BEEN PUBLISHED IN THE PEER REVIEW LITERATURE THAT MAKES
HIM FEEL COMFORTABLE WITH MAKING THAT STATEMENT.
Q. SO YOU'RE RELYING ON WHAT DR. BENOWITZ SAID,
AND AS WE READ FROM DR. BENOWITZ' ARTICLE, HE'S RELYING ON AT
LEAST A COUPLE OF OTHER STUDIES TO SUPPORT THE POINT?
A. WHICH I HAVE READ AS WELL.
Q. NOW, THE ARTICLE THAT PLAINTIFF'S COUNSEL WAS
ASKING YOU ABOUT YESTERDAY WAS A DIFFERENT ARTICLE, AND IT IS
DEFENDANTS' EXHIBIT 5798.

(I.D. 5798 - TOBACCO CONTROL ARTICLE)

Q. BY MR. LEITER: READ UP HERE. IT'S FROM THE
PUBLICATION "TOBACCO CONTROL," CALLED, "REDUCING THE
ADDICTIVENESS OF CIGARETTES."
HAVE YOU HAD A CHANCE TO REVIEW THIS ARTICLE?
A. I HAVE.
Q. AND IN YOUR OPINION, DR. CARCHMAN, DOES
DR. BENOWITZ SAY SOMETHING DIFFERENT IN THIS ARTICLE?
A. NOT THAT I CAN TELL. I MEAN, HE'S REFERRING
HERE TO EXPERIMENTAL STUDIES, SO THESE ARE STUDIES DONE IN A
LABORATORY WITH PEOPLE AND COMMERCIAL CIGARETTES.
Q. WHICH REACH THE SAME KIND OF CONCLUSIONS ABOUT
SHORT-TERM COMPENSATION?
A. YES.

4858

Q. OKAY. ANOTHER SUBJECT.
I ONLY HAVE A COUPLE MORE TO GO. I APPRECIATE
YOUR PATIENCE.
SCIENTIFIC CONSENSUS ON THE HEALTH RISKS OF
SMOKING AND SCIENTIFIC CONSENSUS ON WHETHER EPIDEMIOLOGY CAN
FORM THE BASIS OF WHETHER SMOKING CAUSES DISEASE.
DO YOU REMEMBER TESTIFYING ABOUT THAT?
A. YES.
Q. AND YOU TESTIFIED THAT, IN YOUR OPINION, THE
CONSENSUS WAS REACHED ON USING EPIDEMIOLOGY SOMEWHERE AROUND
THE TIME OF THE '64 SURGEON GENERAL'S REPORT; IS THAT
CORRECT?
A. YES.
Q. OKAY. I WANT TO SHOW YOU JUST A COUPLE OF
PIECES FROM THAT '64 SURGEON GENERAL'S REPORT, WHICH IS
DEFENDANTS' EXHIBIT 5634.

(I.D. 5634 - '64 SURGEON GENERAL'S REPORT)

Q. BY MR. LEITER: IS THAT THE FRONT PAGE?
A. YES.
Q. OKAY. THIS IS FROM THE FORWARD, WHICH IS
SIGNED BY SURGEON GENERAL TERRY.
(READING:)

A "FEW MEDICAL QUESTIONS HAVE
STIRRED SUCH PUBLIC INTEREST OR CREATED MORE
SCIENTIFIC DEBATE THAN THE TOBACCO-HEALTH

4859

CONTROVERSY. THE INTERRELATIONSHIPS OF
SMOKING AND HEALTH UNDOUBTEDLY ARE COMPLEX.
THE SUBJECT DOES NOT LEND ITSELF TO EASY
ANSWERS. NEVERTHELESS, IT HAS BEEN
INCREASINGLY APPARENT THAT ANSWERS MUST BE
FOUND."

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7
8 WHAT'S THE IMPORTANCE OF THAT TO YOU IN
9 DETERMINING WHEN A CONSENSUS WAS REACHED?
10 A. WELL, I THINK IT'S PRETTY CLEAR TO ME THAT WITH
11 THESE WORDS THAT DR. TERRY HAS PUT DOWN HERE, AT LEAST IN THE
12 SURGEON GENERAL'S MIND, AT THAT POINT, THERE IS -- WAS A
13 TOBACCO-HEALTH CONTROVERSY. THE ISSUES ARE COMPLEX, AND
14 THERE WEREN'T GOING TO BE ANY EASY ANSWERS, BUT THEY HAVE TO
15 COME UP WITH SOME ANSWERS.
16 Q. NOW, I WANT TO TURN VERY BRIEFLY TO THE PORTION
17 OF THE REPORT WHICH TALKS ABOUT THE USE OF STATISTICS
18 ALONG -- OR THE USE OF STATISTICS AS THE BASIS FOR
19 ESTABLISHING CAUSATION.
20 THIS IS PAGE 20 FROM THE SURGEON GENERAL'S
21 REPORT OF 1964 (READING):
22
23 "STATISTICAL METHODS CANNOT
24 ESTABLISH PROOF OF A CAUSAL RELATIONSHIP IN
25 AN ASSOCIATION. THE CAUSAL SIGNIFICANCE OF
26 AN ASSOCIATION IS A MATTER OF JUDGMENT WHICH
27 GOES BEYOND ANY STATEMENT OF STATISTICAL
28 PROBABILITY."
4860
1 WHAT DOES THAT MEAN?
2 A. WELL, IT MEANS THAT IF YOU SMOKE, YOU'RE GOING
3 TO HAVE AN INCREASED RISK FOR LUNG CANCER. AND THAT RISK MAY
4 BE TWENTY TIMES OR MORE HIGHER THAN SOMEONE THAT DOESN'T
5 SMOKE. AND EVEN WITH A RISK LIKE THAT, THAT KIND OF NUMBER,
6 SCIENTIFICALLY, WHAT THE SURGEON GENERAL IS SAYING THERE IS,
7 THAT THAT DOESN'T MEAN THAT THAT ASSOCIATION PROVES A CAUSAL
8 RELATIONSHIP.
9 Q. IT'S A MATTER OF JUDGMENT?
10 A. IT'S A MATTER OF JUDGMENT.
11 Q. OKAY. AND THE SURGEON GENERAL EXERCISED THAT
12 JUDGMENT IN THIS REPORT IN CONCLUDING THAT SMOKING CAUSES
13 CANCER IN MEN; IS THAT CORRECT?
14 A. YES.
15 Q. SURGEON GENERAL ALSO RECOGNIZED THAT THERE WERE
16 THINGS NOT YET KNOWN?
17 A. YES.
18 Q. SUCH AS?
19 A. THEY DIDN'T KNOW WHAT IT WAS IN SMOKE THAT WAS
20 DOING IT. THEY DIDN'T KNOW THE MECHANISM. THERE WERE NO
21 ANIMAL MODELS.
22 THE EXPECTATION WAS THAT IT -- SMOKING BEING
23 SUCH AN IMPORTANT RISK FACTOR FOR LUNG CANCER, IF YOU GAVE
24 THIS STUFF TO ANIMALS, BECAUSE ANIMALS GET CANCER, YOU SHOULD
25 GET LUNG CANCER. YOU CAN TAKE OTHER THINGS LIKE DIESEL
26 ENGINE EXHAUST AND MAKE AN ANIMAL BREATHE IT, A RAT, AND YOU
27 GET LUNG CANCER. WHY CAN'T YOU GET THAT WITH TOBACCO SMOKE?
28 AND SO THERE WAS NO -- THERE WAS NO MODEL FOR
4861
1 IT IN '64. WE MAY BE GETTING CLOSE -- CLOSE TO HAVING A
2 USEFUL MODEL TODAY. WE'RE NOT -- I DON'T BELIEVE WE'RE
3 THERE YET.
4 Q. SO NO ANIMAL MODEL IN '64; WE'RE CLOSER TODAY,
5 BUT WE DON'T STILL DON'T HAVE ONE?
6 A. I THINK THAT'S CORRECT.
7 Q. CONSTITUENTS MECHANISM; WE KNOW MORE NOW THAN
8 WE DID IN '64, TRUE?
9 A. IN A SENSE, WE DO.
10 BUT WHEN MR. PIUZE ASKED ME A QUESTION -- AND I
11 TALKED ABOUT MONDAY MORNING QUARTERBACKING. REFLECTING BACK,

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IF I HAD ALL THE INFORMATION TODAY, THERE ARE SOME THINGS, I DON'T THINK, ANYBODY WOULD WANT TO DO 20 OR 30 YEARS AGO. SO -- I DON'T THINK ANYBODY WOULD CARE ABOUT VOLATILE NITROSAMINES. I MEAN, A LOT OF TIME AND EFFORT WAS SPENT ON TRYING TO DO SOMETHING WITH VOLATILE NITROSAMINES IN TOBACCO SMOKE BECAUSE THEY THOUGHT IT WAS IMPORTANT. IN 1999, THEY DON'T THINK IT'S IMPORTANT. POLONIUM 210 OR RADIOACTIVE MATERIAL THAT'S FOUND EVERYWHERE, BUT IT'S ALSO FOUND IN TOBACCO, WAS ALSO A HOT ITEM IN THE '70'S. IT WENT AWAY. SO WE AND OTHERS SPENT A LOT OF TIME WORKING ON THINGS THAT TURNED OUT WENT AWAY. ONE FINAL EXAMPLE. ONE OF THE EARLY ONES WAS A COMPOUND, BENZO(A)PYRENE. ANY TIME YOU BURN ANY ORGANIC MATTER LIKE A STEAK OR LEAVES, YOU GENERATE BENZOPYRENE. SMOKING A CIGARETTE GENERATES IT. EARLY ON, IT WAS THOUGHT TO BE THE THING THAT WAS CRITICALLY IMPORTANT FOR PRODUCING LUNG CANCER. THEN

4862

ABOUT TEN YEARS LATER, IT WENT AWAY; IT CAME BACK; IT WENT AWAY. AND NOW, IT'S BACK ON THE TABLE IN TERMS OF SOMETHING TO -- SOMETHING TO -- IT IS THE NATURE OF SCIENCE. YOU KNOW, YOU HOPE YOU GET SOLID INFORMATION. EVERYBODY TRIES TO DO THE BEST THEY CAN. SOMETIMES, YOU'RE RIGHT. MORE OFTEN THAN THAT, YOU'RE NOT QUITE RIGHT OR WRONG.

Q. LAST SUBJECT. PHILIP MORRIS' EXTERNAL RESEARCH PROGRAM.

YOU WERE QUESTIONED ABOUT THAT DURING YOUR CROSS-EXAMINATION. AND MR. PIUZE SUGGESTED SOME CRITICISM ABOUT THE AMOUNT OF MONEY THAT WAS FUNDED.

DID PHILIP MORRIS FUND ALL OF THE PROJECTS THAT HAD BEEN APPROVED BY THE SCIENTIFIC ADVISORY BOARD?

A. YES.

Q. WAS THE SCIENTIFIC ADVISORY BOARD GIVEN ANY KIND OF UPPER LIMIT AS TO HOW MUCH MONEY WOULD BE AVAILABLE TO THEM?

A. NO.

Q. WELL, WHY NOT THROW $100 MILLION OR A BILLION DOLLARS AT THE EXTERNAL RESEARCH PROGRAM? WOULDN'T THAT BE A BETTER THING TO DO, SCIENTIFICALLY?

A. IT WOULD PROBABLY BE THE WORSE -- THE WORSE POSSIBLE THING TO DO.

Q. WHY?

A. THE GOAL IS TO FUND GOOD SCIENCE. THE SAB WAS THE MECHANISM TO TAKE 150 PROPOSALS AND HAVE THEM EVALUATE

4863

THEM AND CONCLUDE THAT 65 OF THESE PROPOSALS WERE SCIENTIFICALLY GOOD ENOUGH FOR PHILIP MORRIS TO FUND.

Q. IS IT FAIR TO SAY, DOCTOR -- AND YOU MENTIONED THIS -- WELL, LET ME GO TO A LITTLE DIFFERENT PLACE. OVER THE YEARS, WE'VE TALKED ABOUT THE PHILIP MORRIS EXTERNAL RESEARCH PROGRAM. YOU WERE QUESTIONED A LITTLE ABOUT CTR. OVER THE YEARS, HAS PHILIP MORRIS AND THE TOBACCO INDUSTRY BEEN THE ONLY ORGANIZATIONS LOOKING AT SMOKING AND HEALTH?

A. NO.

Q. WHO ELSE HAS BEEN?

A. WELL, YOU HAVE A VARIETY OF GOVERNMENTAL AGENCIES HERE IN THE STATES. YOU HAVE NON-GOVERNMENTAL AGENCIES, LIKE THE AMERICAN CANCER SOCIETY. YOU HAVE INTERNATIONAL ORGANIZATIONS, LIKE THE WORLD HEALTH ORGANIZATIONS. YOU HAVE ALL THE OTHER MAJOR COUNTRIES,

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WHETHER IT'S GERMANY, ENGLAND OR FRANCE, THAT ALSO HAVE GOVERNMENTAL AND NON-GOVERNMENTAL BODIES THAT ARE ALSO FUNDING AND PUBLISHING IN THIS AREA.
Q. YOU MENTIONED PUBLICATIONS.
ABOUT HOW MANY PUBLICATIONS ARE THERE OUT THERE IN THE SCIENTIFIC LITERATURE ON SMOKING AND HEALTH?
A. MORE THAN ENOUGH TO FILL THIS ROOM FROM FLOOR TO CEILING AND WALL TO WALL.
Q. TENS OF THOUSANDS?
A. TEN OF THOUSANDS.
Q. IS IT FAIR TO SAY THAT SCIENTISTS FOCUS ON DIFFERENT QUESTIONS AT DIFFERENT POINTS IN TIME?

4864

A. YES.
Q. AND YOU WERE MENTIONING THAT, A FEW MINUTES AGO WHEN YOU WERE TALKING ABOUT SOME SMOKE CONSTITUENTS, THAT THERE APPEARED TO BE A LOT OF ATTENTION EARLY ON, BUT LESS ATTENTION IN LATER TIMES?
A. YES.
Q. SCIENTISTS LOOK AT DIFFERENT QUESTIONS AT DIFFERENT TIMES?
A. YES.
Q. IN YOUR OPINION, HAS THERE BEEN ANY SCIENTIFIC QUESTION THAT PHILIP MORRIS SCIENTISTS THOUGHT IT WOULD BE APPROPRIATE TO EXPLORE THAT PHILIP MORRIS DID NOT EXPLORE?
A. NOT THAT I'M AWARE OF.
MR. LEITER: THANK YOU, DR. CARCHMAN.
I HAVE NO FURTHER QUESTIONS.
THE COURT: THANK. MR. LEITER.
MR. PIUZE.
MR. PIUZE: I DIDN'T MEAN TO KICK YOU RIGHT AFTER YOUR REDIRECT.
CAN I TAKE ONE MINUTE TO FIND ONE EXHIBIT, YOUR HONOR?
THE COURT: PLEASE, SIR.
MR. PIUZE: THANK YOU.

RECROSS-EXAMINATION
BY MR. PIUZE:
Q. THERE ARE PHARMACEUTICAL COMPANIES OUT THERE RIGHT NOW THAT ARE LOOKING AT THE AEROSOL, RIGHT?

4865

A. YES, SIR.
Q. PHARMACEUTICAL COMPANIES -- "PHARMACEUTICAL" MEANS "DRUG," RIGHT?
RIGHT?
A. YES. YES.
Q. THERE ARE DRUG COMPANIES OUT THERE RIGHT NOW LOOKING AT WAYS TO GIVE THE DRUG NICOTINE TO PEOPLE WITHOUT GIVING THEM ANY SMOKE, ANY TAR, ANY CARCINOGENS, RIGHT?
A. THAT'S CORRECT.
Q. OKAY. I'VE JUST GOT A COUPLE OF POINTS, AND I'M GOING TO BE REALLY BRIEF, AND I'D APPRECIATE IT IF YOU COULD KEEP YOUR ANSWER TO THE POINT.
ALL RIGHT?
A. YES, SIR.
Q. AS FAR AS DR. BENOWITZ IS CONCERNED, DOES DR. BENOWITZ SAY -- ARE YOU FAMILIAR WITH ALL OF HIS -- MOST OF HIS WRITINGS?
A. I THINK SO.
Q. NOT JUST THE COUPLE YOU'VE SHOWN UP HERE, RIGHT?
A. OR THE ONES YOU'VE SHOWN, YES.

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Q. DOES DR. BENOWITZ SAY THAT COMPENSATION AFFECTS THE WAY PEOPLE TAKE IN SMOKE SO THAT, ULTIMATELY, OVER A LONG PERIOD OF TIME, OVER A LONG PERIOD OF TIME, BASICALLY, THERE'S ONLY ABOUT A 10 PERCENT DIFFERENCE BETWEEN ALL OF THE BAD STUFF THEY'RE TAKING IN, LIGHT CIGARETTE VERSUS REGULAR CIGARETTE?
A. I THINK HE SAYS THAT'S A POSSIBILITY, YES.

4866

Q. THANK YOU. THAT'S ONE.
TWO. AS FAR AS MR. PIUZE AND FREE-BASE, AS FAR AS MR. PIUZE AND AMMONIA, AS FAR AS MR. PIUZE AND PH, YOU NEVER READ ANYTHING I EVER PUBLISHED ON ANY OF THAT, DID YOU?
MR. LEITER: OBJECTION.
THE COURT: SUSTAINED.
Q. BY MR. PIUZE: YOU KEPT SAYING MR. PIUZE --
THE COURT: LET ME JUST SAY SOMETHING, THOUGH.
LADIES AND GENTLEMEN OF THE JURY, COUNSEL'S OPINIONS, OF COURSE, ON BOTH SIDES OF THE TABLE ARE IRRELEVANT.
THANK YOU, SIR.
Q. BY MR. PIUZE: HAVE YOU EVER HEARD MY OPINION ON PH?
MR. LEITER: OBJECTION.
THE COURT: SUSTAINED.
I'VE JUST TOLD THE JURY. WE DON'T NEED ANY REINFORCEMENT, COUNSEL.
MR. PIUZE: GREAT.
THE COURT: THANK YOU.
Q. BY MR. PIUZE: ALL OF THAT CAME FROM R.J. REYNOLDS AND BROWN & WILLIAMSON, NOT FROM MICHAEL PIUZE, RIGHT?
A. NO, SIR. THE QUESTIONS -- WHAT I WAS REFERRING TO WAS THE QUESTIONS CAME FROM YOU, AND IT WAS NOT LIMITED TO B&W AND REYNOLDS. I THINK YOU ALSO MENTIONED DR. FARONE.
Q. OKAY. DR. FARONE -- IF I DID -- AND I DON'T REMEMBER -- BUT RJR FOR SURE AND BROWN & WILLIAMSON, RIGHT?

4867

A. YES.
Q. ALL RIGHT.
NEXT. THIS BIOLOGICAL TESTING THAT YOU'RE TALKING ABOUT FOR YOUR CIGARETTES, YOUR HONEST TO GOD CIGARETTES THAT YOU SELL THAT PEOPLE SMOKE, YOU NEVER STARTED TESTING A FINISHED PRODUCT UNTIL ABOUT THE LAST TWELVE MONTHS, RIGHT?
A. APPROXIMATELY, YES.
Q. BENZOPYRENE, NITROSAMINES, ALL THESE THINGS, AND NO ONE KNOWS AT ANY GIVEN TIME WHAT CAUSES HARM? IS THAT WHAT YOU'RE SAYING?
A. NO. FIRST OF ALL, I SAID VOLATILE NITROSAMINES.
Q. LET'S STAY WITH THAT. BECAUSE I DON'T WANT TO GET DUG IN ON CHEMICAL STUFF.
A. OKAY.
Q. I JUST WANT TO GET A CONCEPT HERE. REGARDLESS OF WHAT STUFF IT IS THAT'S CAUSING IT, IT WAS KNOWN THAT THIS STUFF WAS BAD, RIGHT?
A. WHICH STUFF ARE WE TALKING ABOUT?
Q. SMOKE.
A. YES.
Q. REGARDLESS OF WHAT CAUSES THE TREADS TO COME OFF OF A FIRESTONE TIRE, LET'S SAY, REGARDLESS OF WHAT THE CAUSE OF THAT IS, WHEN SOMEONE KNOWS THE TREAD'S COMING OFF, YOU GROUND THE TIRE, RIGHT?

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27 A. FOR THAT EXAMPLE, YES.
28 Q. WITHOUT THE GOVERNMENT TAKING YOU BY THE HAND?
4868
1 THE COURT: COUNSEL. COUNSEL.
2 MR. LEITER: OBJECTION.
3 THE COURT: LOOK. ALL RIGHT. I TALKED ABOUT THIS
4 OUTSIDE THE PRESENCE OF THE JURY. NOW, I'M GOING TO TALK
5 ABOUT IT IN FRONT OF THE JURY.
6 DECIBEL LEVELS ARE NOT CONSTRUCTIVE.
7 MR. PIUZE: SORRY.
8 THE COURT: THANK YOU.
9 MR. PIUZE: SORRY.
10 Q. BY MR. PIUZE: WHEN IT'S KNOWN THAT EVEN -- AND
11 NOT TO BELITTLE THIS NUMBER -- BUT 150 PEOPLE OR SO GET
12 KILLED BY BAD TIRES, A MANUFACTURER DOESN'T HAVE TO WAIT
13 UNTIL THE GOVERNMENT TAKES IT BY THE HAND BEFORE --
14 MR. LEITER: OBJECTION. ARGUMENT.
15 Q. BY MR. PIUZE: -- BEFORE IT PUTS ITS PRODUCT ON
16 THE SIDELINE, DOES IT?
17 MR. LEITER: OBJECTION. ARGUMENT.
18 THE COURT: OVERRULED.
19 THE WITNESS: NO. IN THAT EXAMPLE, THE GOVERNMENT --
20 THE MANUFACTURER DOES NOT HAVE TO WAIT.
21 Q. BY MR. PIUZE: IF PHILIP MORRIS 20 YEARS AGO,
22 30 YEARS AGO, LONGER AGO HAD STARTED DOING RESEARCH WITH
23 INHALERS THAT COULD GET NICOTINE TO THE BRAIN WITH A LITTLE
24 BIT OF FLAVOR, PHILIP MORRIS WOULD HAVE BEEN ADMITTING THAT
25 NICOTINE WAS A DRUG AND WOULD HAVE BEEN RISKING FDA
26 OVERSIGHT, RIGHT?
27 MR. LEITER: OBJECTION. ARGUMENT. CALLS FOR
28 SPECULATION.
4869
1 THE COURT: OVERRULED.
2 THE WITNESS: I HAVE ACTUALLY HEARD THAT AND MAY HAVE
3 ACTUALLY EVEN READ SOME DISCUSSIONS -- SOME MEMOS BY FOLKS
4 WITHIN THE COMPANY THAT TALKED ABOUT THAT.
5 HAVING SAID THAT, THE COMPANY MOUNTED FOR
6 SEVERAL YEARS A LARGE, LARGE, VERY LARGE PROGRAM, THE
7 NICOTINE ANALOG PROGRAM, TO FIND SOMETHING THAT IT COULD PUT
8 INTO THE CIGARETTES AFTER IT REMOVED NICOTINE.
9 I -- I JUST DON'T UNDERSTAND -- AND I'M NOT
10 ARGUING WITH YOU -- I TRULY DON'T UNDERSTAND HOW YOU CAN BE
11 CONCERNED -- I DON'T MEAN YOU -- IF THE COMPANY WAS CONCERNED
12 ABOUT THIS QUESTION OF NICOTINE AS A DRUG IN REGULATION, WHY
13 IT ALSO HAD THIS LARGE PROGRAM TO TAKE NICOTINE OUT AND PUT A
14 NICOTINE ANALOG IN.
15 SO THERE ARE THINGS THAT I'VE READ THAT I JUST
16 DON'T UNDERSTAND. AND THE PEOPLE I'VE SPOKEN TO THAT WERE
17 INVOLVED IN IT HAVE NOT GIVEN ME AN EXPLANATION I UNDERSTAND.
18 Q. THERE ARE THINGS THAT YOU'VE READ FROM
19 PHILIP MORRIS' OWN DOCUMENTS THAT YOU DON'T UNDERSTAND AND
20 PHILIP MORRIS' OWN PEOPLE CAN'T GIVE AN EXPLANATION FOR,
21 RIGHT?
22 A. THAT I UNDERSTAND.
23 Q. RIGHT?
24 A. ABSOLUTELY.
25 Q. THE JURY AT A DIFFERENT STAGE OF THIS TRIAL,
26 VERY EARLY ON IN THIS TRIAL, HEARD LONG, BORING TESTIMONY,
27 READ IT, OF TESTIMONY FROM A MELE AND UYDESS.
28 REMEMBER MELE AND UYDESS?
4870
1 A. I KNOW DRS. MELE AND UYDESS.
2 Q. AND WASN'T ONE OF THEM WORKING ON THE NICOTINE

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3 ANALOG?
4 A. DR. MELE WAS WORKING IN DR. DE NOBLE'S LAB ON
5 THAT PROGRAM.
6 Q. AND DIDN'T THAT ALL GET SHUT DOWN?
7 A. WELL, THEY COULDN'T FIND ANYTHING. IT WAS THE
8 END OF THE PROGRAM.
9 Q. GOT SHUT DOWN, RIGHT?
10 A. IT WAS THE END OF THE WORK, YES.
11 Q. AND THAT WOULD HAVE BEEN DR. MELE, RIGHT?
12 A. HE WAS IN THAT PART OF THE PROGRAM, YES.
13 Q. FINE. BACK TO THIS.
14 IF PHILIP MORRIS SOMEHOW HAD PUT MONEY ON THE
15 LINE AND BEEN SUCCESSFUL IN DEVELOPING AN INHALER THAT WOULD
16 GIVE NICOTINE TO SMOKERS WITH NO BAD SIDE EFFECTS, IT WOULD
17 HAVE BEEN RISKING ITS MARLBORO FRANCHISE, WOULDN'T IT?
18 MR. LEITER: OBJECTION. CALLS FOR SPECULATION.
19 THE COURT: OVERRULED.
20 THE WITNESS: ACTUALLY, I THINK IT MAY HAVE BEEN ONE
21 OF THE THINGS THAT COULD HAVE INSURED ITS FUTURE WITH --
22 WITHOUT, I'M SURE THERE WOULD BE OTHER PEOPLE, OTHER ISSUES,
23 PEOPLE RAISING CONCERNS -- THERE ARE OTHER RISKS. THE RISKS
24 WOULD NOT BE AS GREAT AS THE RISKS OF SMOKING.
25 BUT I THINK IF THERE COULD HAVE BEEN A PRODUCT
26 THAT WE COULD HAVE MADE LIKE THAT, I THINK THE COMPANY WOULD
27 HAVE DONE IT. I WASN'T HERE. I DON'T KNOW. I KNOW NOW
28 WHERE THEY DO HAVE THE TECHNOLOGY FOR THAT, THEY ARE LOOKING
4871
1 INTO IT.
2 BUT IF SOMEBODY COULD HAVE DONE THAT -- IT
3 DIDN'T HAVE TO BE PHILIP MORRIS -- IF SOME ENTREPRENEUR
4 WANTED TO DO IT AND WAS SUCCESSFUL, MAYBE THERE WOULDN'T BE
5 ANY CIGARETTES OUT THERE NOW. AND I THINK BECAUSE THERE'S SO
6 MUCH MONEY, AS YOU POINTED OUT, WITH THE NUMBERS YESTERDAY AT
7 STAKE, I THINK IF SOMEBODY COULD HAVE DONE IT AND IT COULD
8 HAVE WORKED, THEY WOULD HAVE DONE IT.
9 Q. WHO HAD THE MONEY TO DEVELOP THIS?
10 A. WELL, THE PHARMACEUTICAL -- 30 YEARS AGO?
11 THE PHARMACEUTICAL INDUSTRY HAD THE MONEY FOR
12 DOING THAT. WHETHER PHILIP MORRIS HAD MONEY LIKE THIS TO DO
13 IT 30 YEARS AGO, I'D HAVE TO THINK -- THINK ABOUT IT.
14 CLEARLY, IN THE LAST --
15 Q. THINK ABOUT IT.
16 A. -- CLEARLY, IN THE LAST 20 SOMETHING YEARS,
17 PHILIP MORRIS WOULD HAVE HAD MONEY, THOUGH, IT DIDN'T HAVE
18 WHAT I THINK WOULD BE THE RIGHT CONFIGURATION OF RESOURCES,
19 PEOPLE AND TECHNOLOGY TO DO THAT.
20 BUT IF SOMEBODY COULD HAVE DONE IT, I THINK IT
21 COULD HAVE TOTALLY CHANGED -- CHANGED THIS WHOLE -- THIS
22 WHOLE INDUSTRY, AND SOMEBODY COULD BE MAKING A LOT OF MONEY,
23 AND I THINK PHILIP MORRIS, AS YOU AGAIN POINTED OUT, HAS
24 MADE -- HAS MADE A LOT OF MONEY. SO I --
25 Q. THAT'S THE --
26 A. -- I THINK IF THEY COULD FIND A WAY TO MAKE
27 MONEY, THEY WOULD DO IT.
28 Q. WHY MESS WITH SUCCESS?
4872
1 MR. LEITER: OBJECTION. ARGUMENT.
2 THE COURT: SUSTAINED.
3 Q. BY MR. PIUZE: BACK IN FEBRUARY OF 1969 WHERE
4 MR. WAKEHAM -- DR. WAKEHAM AND DR. DUNN WERE DISCUSSING WHAT
5 SHOULD NEVER LEAVE THESE WALLS, THAT CIGARETTE SMOKE IS A
6 DRUG, THEY WERE AFRAID OF FDA REGULATION OF CIGARETTES AS A
7 DRUG, RIGHT?

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A. I'M SURE THERE WAS A DISCUSSION, AND I'M SURE
THEY WERE CONCERNED.
Q. AND PHILIP MORRIS HAS FOUGHT THAT FIGHT RIGHT
UP UNTIL 10:15 TODAY, MAY 8TH --
MR. LEITER: OBJECTION.
Q. BY MR. PIUZE: -- 2001?
MR. LEITER: ARGUMENT.
THE COURT: OVERRULED.
THE WITNESS: I HAVE TO THINK -- OVERRULED. THAT
MEANS I CAN TALK.
THE COURT: IF YOU HAVE ANY QUESTIONS, YOU JUST ASK
ME, AND YOU LET ME KNOW.
THE WITNESS: OVERRULED. THAT'S BAD FOR MARTY AND
GOOD FOR --
THE COURT: YOU'VE DONE PRETTY WELL.
THE WITNESS: YEAH. I THINK THAT PHILIP MORRIS
PUBLICLY AND PRIVATELY HAS TAKEN THE POSITION THAT WE WANT
GOVERNMENT REGULATION.
IN FACT, MR. PARISH THAT YOU WERE REFERRING TO
BEFORE, A LAWYER, HAS SAID ON NUMEROUS OCCASIONS, WE WANT --
AND HE CALLS IT REASONABLE BUT TOUGH REGULATIONS. AND THAT
4873
WASN'T THIS MORNING. THAT WAS SOMETIME AGO.
COULD I TELL YOU WITH A DATE CERTAIN?
NO, I CAN'T TELL YOU THAT.
Q. BY MR. PIUZE: WELL, CAN I TELL YOU WITH A
CERTAINTY THAT ONE OF THE MANAGEMENT TEAM, SENIOR MANAGEMENT
TEAM OF PHILIP MORRIS WHO WORKS IN NEW YORK CITY, ONE OF THE
9 OR 10 PEOPLE THAT RUN THIS WHOLE DOMESTIC TOBACCO OPERATION
HAVE TOLD US, WE DO NOT WANT FDA REGULATION AS A DRUG, THAT'S
NOT OUR POSITION?
A. WHO SAYS THAT?
Q. ELLEN MERLO.
A. OKAY.
Q. WHAT SHE SAID WAS --
MR. LEITER: I'M GOING TO OBJECT TO THE
CHARACTERIZATION OF THE TESTIMONY, YOUR HONOR.
THE COURT: SUSTAINED. SUSTAINED.
Q. BY MR. PIUZE: WASN'T MR. PARISH TALKING ABOUT
FDA REGULATION AS AN AGRICULTURAL PRODUCT AND NOT A DRUG?
MR. LEITER: YOUR HONOR, I'M OBJECTING TO THE
CHARACTERIZATION. MISSTATING.
THE COURT: OVERRULED.
AS FAR AS YOU UNDERSTAND.
THE WITNESS: I CAN'T ANSWER THAT QUESTION. I DON'T
KNOW. ALL I REMEMBER HIM SAYING PUBLICLY, READING, WAS THAT
PHILIP MORRIS WANTED FDA REGULATION. IF IT WAS AN
AGRICULTURAL PRODUCT, IT WOULD BE UNDER THE U.S. DEPARTMENT
OF AGRICULTURE, NOT UNDER THE FOOD AND DRUG ADMINISTRATION.
BUT I DON'T KNOW ENOUGH --
4874
Q. THAT'S MY POINT.
A. -- I DON'T KNOW ENOUGH TO ANSWER THE QUESTION.
Q. FROM 1969 ON -- THAT'S MY POINT -- FROM 1969
ON, HASN'T PHILIP MORRIS FOUGHT FDA REGULATION OF ITS
CIGARETTES AS A DRUG UNTIL 19 MINUTES AFTER 10:00 ON MAY 8TH?
MR. LEITER: OBJECTION. OUTSIDE THE SCOPE OF HIS
EXPERTISE AND TESTIMONY AND MISSTATES THE TESTIMONY.
THE COURT: ALL RIGHT. VERY WELL. BUT HE HAS RAISED
THE SUBJECT, SO I'LL ALLOW IT.
THE WITNESS: I DON'T KNOW THE ANSWER.
MR. PIUZE: I'M ALL DONE AGAIN.
THANK YOU.

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13 THE COURT: THANK YOU.
14 MR. LEITER: YOUR HONOR, JUST A COUPLE OF VERY QUICK
15 QUESTIONS.
16 THE COURT: PLEASE.
17
18 REDIRECT EXAMINATION (FURTHER)
19 BY MR. LEITER:
20 Q. DR. CARCHMAN, FEDERAL GOVERNMENT CONCLUDED IN
21 1964 SMOKING CAUSES LUNG CANCER IN MEN?
22 A. YES.
23 Q. AND IN ABOUT A YEAR LATER, THAT SMOKING CAUSES
24 LUNG CANCER IN WOMEN?
25 A. YES.
26 Q. FEDERAL GOVERNMENT EVER CHANGE ITS MIND?
27 A. NO.
28 Q. SMOKE CONTAINS BAD THINGS?
4875
1 A. YES.
2 Q. SOME OF THOSE BAD THINGS ARE CARCINOGENIC?
3 A. YES.
4 Q. AND WE KNOW THAT SMOKING CAUSES LUNG CANCER,
5 AMONG OTHER DISEASES, RIGHT?
6 A. YES.
7 Q. BUT WE DON'T KNOW PRECISELY WHAT IN THE SMOKE
8 OR WHAT COMBINATION OF THINGS IN THE SMOKE CAUSE CANCER IN
9 HUMANS, RIGHT?
10 A. THAT'S CORRECT.
11 Q. WHY IS THAT FOR PHILIP MORRIS?
12 A. WELL, IT REALLY PROVIDES THE CRITICAL GUIDANCE
13 AS TO WHAT WE SHOULD DO OR COULD DO IN TERMS OF MODIFYING THE
14 PRODUCT.
15 IF YOU COULD TELL SOMEBODY WHAT IT IS, THEN
16 YOU'D HAVE A SHOT AT TRYING TO REDUCE IT OR KEEP IT FROM
17 GETTING IN THERE IN THE FIRST PLACE.
18 MR. LEITER: NOTHING FURTHER.
19 THE COURT: SIR, YOU ARE EXCUSED.
20 THE WITNESS: THANK YOU VERY MUCH, YOUR HONOR.
21 THE COURT: THANK YOU.
22 MR. CARLTON.
23 MR. CARLTON: YOUR HONOR, PHILIP MORRIS CALLS
24 DR. JOSHUA TRABULUS.
25 THE COURT: THANK YOU.
26 SIR, IF YOU'LL PLEASE STEP FORWARD.
27 JUST INTO THIS AREA OVER BY THE WITNESS STAND.
28 FACE MY CLERK, WHO'S STANDING RIGHT THERE.
4876
1 RAISE YOUR RIGHT HAND AND BE SWORN AS A WITNESS
2 IN THIS MATTER.
3 JOSHUA TRABULUS,
4 CALLED AS A WITNESS BY THE DEFENDANTS, HAVING BEEN FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS:
6
7 THE CLERK: HAVE A SEAT.
8 AND SIR, FOR THE RECORD, IF YOU COULD STATE
9 YOUR FIRST AND LAST NAME AND SPELL YOUR LAST NAME.
10 THE WITNESS: JOSHUA TRABULUS, T-R-A-B-U-L-U-S.
11
12 DIRECT EXAMINATION
13 BY MR. CARLTON:
14 Q. GOOD MORNING, DR. TRABULUS?
15 A. GOOD MORNING.
16 MR. CARLTON: GOOD AFTERNOON, EVERYONE. IT'S BEEN A
17 WHILE SINCE I'VE STOOD UP, AND I'LL SHAKE THE COBWEBS AND

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DUST OFF HERE.
Q. YOU ARE A MEDICAL DOCTOR, AREN'T YOU?
A. THAT'S CORRECT.
Q. HOW LONG HAVE YOU BEEN A PRACTICING PHYSICIAN?
A. 22 YEARS.
Q. AND WHERE DID YOU OBTAIN YOUR MEDICAL DEGREE?
A. MEDICAL COLLEGE OF WISCONSIN AT MARQUETTE.
Q. YOU DID A RESIDENCY AFTERWARDS?
A. YES.
Q. WHERE WAS THAT?
A. UCLA MEDICAL CENTER.

4877

Q. HOW LONG WERE YOU THERE?
A. THREE YEARS.
Q. AND AFTER YOU COMPLETED YOUR RESIDENCY, DID YOU SET UP A PRACTICE?
A. I DID.
Q. YOU'VE BEEN IN PRIVATE PRACTICE EVER SINCE?
A. YES.
Q. DO YOU HAVE A SPECIALTY?
A. I'M A GENERAL INTERNIST. NO SUBSPECIALTY. INTERNAL MEDICINE'S MY SPECIALTY.
Q. CAN YOU JUST EXPLAIN FOR THE JURY VERY BRIEFLY WHAT AN INTERNIST IS?
A. AN INTERNIST IS A DIAGNOSTIC PHYSICIAN FOR ADULTS. I DON'T DO SURGERY, DELIVER BABIES, DON'T TAKE CARE OF CHILDREN. I TAKE CARE OF ADULT MEDICAL PROBLEMS. I TREAT AS MANY AS I CAN. THOSE I CAN'T, I REFER TO SUBSPECIALISTS. SO I'M A PRIMARY CARE PHYSICIAN FOR ADULTS.
Q. SO WHEN AN ADULT SAYS, I'VE GOT SOMETHING WRONG WITH ME, I NEED TO GO TO A DOCTOR, YOU'D BE THE KIND OF DOCTOR THEY WOULD PICK?
A. YES.
Q. ALL RIGHT. YOU'RE BOARD-CERTIFIED IN INTERNAL MEDICINE?
A. YES.
Q. ALL RIGHT. AS A MEDICAL DOCTOR, DO YOU KNOW THAT SMOKING POSES HEALTH RISKS?
A. YES.
Q. AND HOW LONG HAVE YOU BEEN AWARE OF THAT?

4878

A. I THINK SINCE MY CHILDHOOD. SINCE JUNIOR HIGH SCHOOL.
Q. WELL, LET ME ASK. HOW OLD ARE YOU?
A. 52.
Q. OKAY. SO FOR -- WELL, SINCE WHEN? SINCE THE EARLY TO MID '60'S?
A. YEAH. I WAS BORN IN 1949. SO THE EARLY TO MID '60'S.
Q. OKAY. AND YOU BECAME AWARE OF IT AS A CHILD. HOW DID THAT HAPPEN?
A. THROUGH MY PARENTS, THE MEDIA, THROUGH MY READING AND MY SELF-EDUCATION.
Q. FROM YOUR EXPERIENCE, WAS IT WIDELY KNOWN AT THAT TIME?
A. I CAN'T ATTEST TO THAT. IT WAS KNOWN IN MY FAMILY.
Q. OKAY. NOW, DO YOU COUNSEL ALL OF YOUR PATIENTS WHO SMOKE TO STOP?
A. I WOULD SAY WITH ONE EXCEPTION, I DO. THE PEOPLE WHO ARE TEENAGERS OR EARLY '20'S WHO ARE GOING THROUGH A PROCESS OF SMOKING WHEN I BELIEVE THEY EVENTUALLY WANT TO STOP. I DON'T LECTURE THEM OR GET ON THEIR CASE AT THAT

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23 STAGE OF THEIR LIFE.
24 Q. OKAY.
25 A. I BELIEVE THEY'LL EVENTUALLY COME TO THEIR
26 DECISIONS ON THEIR OWN, AND I CAN INFORM THEM BUT NOT
27 PRESSURE THEM.
28 Q. YOU COUNSEL OLDER PERSONS TO STOP; IS THAT
4879
1 RIGHT?
2 A. YES.
3 Q. OKAY. AND YOU'VE DONE THAT AS LONG AS YOU'VE
4 BEEN IN PRIVATE PRACTICE?
5 A. AS LONG AS I'VE BEEN IN PRACTICE, YES.
6 Q. AND WOULD YOU SAY THAT'S THE GENERALLY ACCEPTED
7 NORM AMONG PHYSICIANS?
8 A. YES.
9 Q. WHEN YOU FIRST MEET A PATIENT, FIRST TIME A
10 PATIENT COMES TO YOUR OFFICE, DO YOU ASK THEM WHETHER THEY
11 SMOKE?
12 A. IF THEY'RE THERE FOR A COMPLETE PHYSICAL OR A
13 COMPREHENSIVE EVALUATION. I NEVER -- I ALWAYS ASK THEM IF
14 THEY SMOKE --
15 Q. OKAY.
16 A. -- WITHOUT EXCEPTION. IF THEY'RE THERE FOR A
17 QUICK VISIT AND I'M GOING TO, PERHAPS, SEE THEM LATER FOR
18 MORE COMPREHENSIVE EXAM -- JUST FOR A SORE THROAT, SAY -- I
19 MAY NOT GET TO THAT. BUT EVENTUALLY, IT WILL BE GOTTEN TO.
20 Q. SOMETIME IN THE COURSE OF A RELATIONSHIP,
21 YOU'LL GET TO THAT ISSUE?
22 A. YES.
23 Q. ALL RIGHT. DO YOU EXPLAIN TO PEOPLE -- WELL,
24 LET ME TAKE THAT BACK.
25 RICHARD BOEKEN. DO YOU KNOW RICHARD BOEKEN?
26 A. I DO.
27 Q. IS HE A PATIENT OF YOURS?
28 A. HE IS, YES.
4880
1 Q. HOW LONG HAS HE BEEN A PATIENT OF YOURS?
2 A. SINCE 1980.
3 Q. DO YOU KNOW WHAT PROMPTED HIS FIRST VISIT TO
4 YOU?
5 A. I BELIEVE HE CAME IN WITH BRONCHIAL SYMPTOMS,
6 COUGH, SPUTUM PRODUCTION.
7 Q. HAVE YOU BEEN RICHARD BOEKEN'S PRIMARY CARE
8 PHYSICIAN SINCE THEN, SINCE 1980?
9 A. YES.
10 Q. AND DO YOU HAVE ANY SENSE FOR HOW OFTEN YOU'VE
11 SEEN HIM DURING THE INTERVENING 20 YEARS OR SO?
12 A. MY SENSE COMES FROM THE DEPOSITION THAT WE HAD.
13 I BELIEVE IT WAS ABOUT 20 YEARS, WHEN I THINK BACK OVER THE
14 20 YEARS, OR MORE.
15 Q. NOW, DURING THAT TIME PERIOD, HAVE YOU
16 SUGGESTED ON MORE THAN ONE OCCASION THAT IT WOULD BE IN
17 MR. BOEKEN'S BEST INTEREST TO STOP SMOKING?
18 A. I BELIEVE SO.
19 Q. AND ON MORE THAN ONE OCCASION, HAS HE TOLD YOU
20 THAT HE WANTED TO QUIT SMOKING?
21 A. I BELIEVE SO.
22 Q. AND DID HE TELL YOU THAT HE WANTED TO QUIT
23 SMOKING BECAUSE HE RECOGNIZED THAT THERE COULD BE POTENTIAL
24 HEALTH HAZARDS IN THE FUTURE IF HE CONTINUED TO SMOKE?
25 A. I DON'T REMEMBER IF HE ACTUALLY UTTERED THOSE
26 WORDS.
27 Q. WAS IT YOUR UNDERSTANDING THAT'S WHY HE WANTED

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28 TO QUIT SMOKING?
4881
1 A. MY UNDERSTANDING WAS THAT HE WANTED TO QUIT FOR
2 HEALTH REASONS, YES.
3 Q. DID YOU EVER TELL RICHARD BOEKEN, I WOULD TELL
4 YOU TO STOP, BUT I'M NOT GOING TO, OR WORDS TO THAT EFFECT?
5 A. I MIGHT HAVE SAID -- I DON'T RECALL THOSE EXACT
6 WORDS. I MIGHT HAVE SAID, I WOULD TELL YOU TO STOP, BUT I'VE
7 DONE SO BEFORE, SO I'M NOT GOING TO ELABORATE ON IT, AND THAT
8 WOULD HAVE BEEN MY MEANING.
9 Q. OKAY. BECAUSE YOU HAD PREVIOUSLY DISCUSSED THE
10 ISSUE OF SMOKING?
11 A. I WOULDN'T HAVE SAID, I WILL -- I WOULD TELL
12 YOU TO STOP, BUT I'M NOT GOING TO, BECAUSE IT'S NOT AN
13 IMPORTANT ISSUE. THAT WOULDN'T BE MY MEANING.
14 Q. I SEE. ALL RIGHT.
15 NOW, WHEN SOMEONE COMES TO YOU FOR ADVICE ON
16 HOW TO QUIT SMOKING, WHAT DO YOU TELL THEM?
17 A. I'M GOING TO TELL THEM THAT IT'S REALLY A
18 DIFFICULT PROBLEM. I RECOGNIZE THAT. I WOULD INFORM THEM
19 ABOUT THE VARIOUS WAYS THAT I CAN HELP THEM STOP SMOKING,
20 WHICH WOULD BE, ASIDE FROM ENCOURAGEMENT AND INFORMING THEM
21 AND SUPPORTING THEM, IT WOULD ALSO BE TO EXPLAIN THE VARIOUS
22 PHARMACOLOGICAL -- PHARMACEUTICAL SUPPORTS THAT THEY COULD
23 USE, LIKE NICORETTE GUM, PATCH.
24 NOWADAYS, WE HAVE SOMETHING CALLED ZYBAN. I
25 WOULD MAKE THEM AWARE THAT THERE ARE OTHER METHODS.
26 HYPNOSIS, SUPPORT GROUPS. BUT I'D ALSO MAKE THEM AWARE THE
27 PRIMARY WAY THAT PEOPLE WHO WANT TO STOP SMOKING IS COLD
28 TURKEY ON THEIR OWN.
4882
1 Q. SO IF SOMEONE WERE TO ASK YOU FOR ASSISTANCE,
2 YOU WOULD HAVE A RANGE OF OPTIONS TO DISCUSS WITH THEM?
3 A. YES.
4 Q. AND IN TERMS OF -- YOU MENTIONED THE PATCH.
5 A. YES.
6 Q. ALL RIGHT. DO YOU LIKE TO FOLLOW UP WITH YOUR
7 PATIENTS TO FIND OUT HOW THAT'S WORKING?
8 A. THAT WOULD BE MY PRACTICE.
9 Q. ALL RIGHT. SO IF YOU PRESCRIBE THE PATCH FOR
10 SOMEONE, YOU WOULD ASK THEM TO STAY IN TOUCH WITH YOU?
11 A. YES.
12 Q. AND IF IT DIDN'T WORK, THEN YOU WOULD HAVE
13 OTHER OPTIONS TO SUGGEST?
14 A. YES.
15 Q. OKAY. YOU PRESCRIBED THE PATCH FOR MR. BOEKEN
16 AT SOME POINT, DIDN'T YOU?
17 A. YES.
18 Q. DO YOU RECALL HIM EVER COMING BACK TO YOU AND
19 ASKING YOU FOR FURTHER ASSISTANCE?
20 A. I CAN'T REMEMBER THAT EXACT CONVERSATION.
21 Q. NO RECOLLECTION OF ANYTHING LIKE THAT?
22 A. WELL, WE TALKED ABOUT TOBACCO AFTER THE PATCH
23 HAD FAILED, BUT I DON'T REMEMBER THAT HE'D COME TO ME
24 SPECIFICALLY ON A VISIT WHERE HE WAS LOOKING FOR ASSISTANCE.
25 Q. UH-HUH. DID HE TELL YOU HOW LONG HE WORE THE
26 PATCH?
27 A. NO. BUT IT WAS SHORT OF A THERAPEUTIC TIME
28 THAT HE WOULD HAVE NEEDED TO STAY WITH THE PATCH.
4883
1 Q. WHAT WOULD THE THERAPEUTIC TIME HAVE BEEN?
2 A. IT'S USUALLY 12 YEARS.
3 Q. 12 YEARS. 10 HOURS WOULDN'T BE THE

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4 THERAPEUTIC, I TAKE IT?
5 A. NO.
6 MR. CARLTON: NOTHING FURTHER.
7 THE COURT: THANK YOU, SIR.
8
9 CROSS-EXAMINATION
10 BY MR. PIUZE:
11 Q. WAS MR. BOEKEN ADDICTED TO TOBACCO?
12 A. IT'S MY BELIEF THAT HE WAS, YES.
13 Q. WAS THAT YOUR BELIEF DURING THE TIME YOU
14 TREATED HIM?
15 A. YES.
16 Q. DID HE COME TO YOU AND ASK YOU TO PRESCRIBE
17 BOTH NICORETTE GUM ON SOME OCCASIONS AND NICODERM PATCHES ON
18 OTHER OCCASIONS?
19 A. I HONESTLY DON'T BELIEVE -- I'M NOT CERTAIN HE
20 CAME TO ME WITH THE EXPRESS PURPOSE OF WHETHER I'D PRESCRIBE
21 THESE FOR HIM.
22 THEY, OBVIOUSLY, CAME UP BECAUSE THEY WERE
23 PRESCRIBED. BUT I DON'T REMEMBER WHETHER THE CONVERSATION
24 WAS INITIATED BY HIM ASKING FOR THOSE THINGS.
25 Q. GOOD POINT. HE CAME TO YOU, YOU WERE TALKING
26 ABOUT SMOKING, HIS DESIRE TO QUIT, AND YOU WOUND UP GIVING
27 HIM THESE PRESCRIPTIONS?
28 A. YES.
4884-1
1 Q. DID YOU EVER GIVE HIM ANY LECTURES?
2 A. I DON'T BELIEVE SO. I DON'T FIND THAT
3 LECTURING OR GETTING ON PEOPLE'S CASE HAS EVER BEEN USEFUL IN
4 CIGARETTE SMOKING OR ANY OTHER BAD HABITS OR ADDICTIONS THAT
5 MY PATIENTS SUFFER FROM.
6 Q. WHY DO YOU THINK --
7 A. IT'S MORE ALIENATING THAN ANYTHING TO DO THAT.
8 Q. NO LECTURES.
9 WHY DO YOU THINK HE WAS ADDICTED?
10 A. BECAUSE I BELIEVE NICOTINE IS AN ADDICTIVE
11 SUBSTANCE, AND I BELIEVE THAT THE PHYSICAL ASPECTS OF
12 NICOTINE IN HIS CASE WERE ADDICTIVE.
13 I ALSO BELIEVE THERE'S A MENTAL ADDICTION, A
14 HABIT THAT PEOPLE ACQUIRE THROUGH LONG-TIME SMOKING TO WHICH
15 ALSO WAS A PROBLEM WITH BOTH RICHARD AND ANY SMOKER IN MY
16 EXPERIENCE.
17 I BELIEVE HE'D STARTED SMOKING AT A YOUNG AGE
18 AND HAD BECOME HABITUATED EARLY ON IN LIFE.
19 AND MY OTHER REASONS FOR THINKING HE WAS
20 ADDICTED WAS THAT HE TRIED TO STOP AND FAILED ON SEVERAL
21 OCCASIONS WHICH, TO MY MIND, IS ANOTHER SYMPTOM OF AN
22 ADDICTION.
23 MR. PIUZE: I ALSO HAVE NO FURTHER QUESTIONS.
24 THE COURT: YES.
25
26 REDIRECT EXAMINATION
27 BY MR. CARLTON:
28 Q. DR. TRABULUS, JUST BECAUSE SOMEONE IS ADDICTED
4885-1
1 TO SOMETHING DOESN'T MEAN THEY SHOULD STOP TRYING TO QUIT,
2 DOES IT?
3 A. THAT THEY SHOULD STOP?
4 Q. STOP TRYING TO QUIT?
5 A. NO.
6 Q. ALL RIGHT.
7 NOTHING FURTHER
8 THE COURT: OKAY. SIR, YOU ARE EXCUSED.

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THE WITNESS: THANK YOU VERY MUCH.
THE COURT: THANK YOU.
MR. CARLTON: WOULD THIS BE A GOOD TIME FOR A BREAK, YOUR HONOR?
THE COURT: THIS WOULD BE A FINE TIME.
LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A BREAK UNTIL 10 MINUTES UNTIL 10:00.
YES, WOULD YOU PLEASE STAY.
ALSO, ONE OF THE JURORS ASKED IF I COULD GIVE YOU ESTIMATES AS TO HOW MUCH MORE TIME REMAINS IN THE TRIAL.
TODAY AT A CONVENIENT POINT OUTSIDE YOUR PRESENCE, I WILL TALK TO THE LAWYERS ABOUT THAT SUBJECT, AND THEN PROBABLY AT THE END OF THE DAY, I'LL SPEAK TO YOU ABOUT THAT.
OKAY. AND IF MS. CORMIA WOULD PLEASE STAY WITH US.

(RECESS.)

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